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**Carnegie Endowment for International Peace**  
Division of International Law  
Washington



# THE PROCEEDINGS OF THE HAGUE PEACE CONFERENCES

Translation of the Official Texts

PREPARED IN THE  
Division of International Law of the Carnegie  
Endowment for International Peace

UNDER THE SUPERVISION OF  
JAMES BROWN SCOTT  
DIRECTOR

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The Conference of 1899

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## PREFATORY NOTE

The present translation of the proceedings of the Hague Peace Conferences, the first complete version to appear in the English language, has been prepared in the Division of International Law of the Carnegie Endowment for International Peace. It was undertaken at the special instance and request of the Honorable Robert Lansing, Secretary of State of the United States, who, on behalf of the Department of State, accepted the offer of the Trustees of the Endowment of the use of its offices and the services of its personnel at the outbreak of the war between the United States and Germany. The work of the translation, although formidable, was fortunately completed early enough to print a sufficient number of preliminary copies for the use of the American Commission to Negotiate Peace.

The proceedings of the Conference of 1899, as originally published by the Netherland Government, are contained in a single large volume, consisting of four parts devoted respectively to the Conference and the First, Second and Third Commissions, and bearing the title-page: *Conférence internationale de la paix. La Haye, 18 mai-29 juillet 1899. Ministère des affaires étrangères. La Haye, Imprimerie nationale, 1899.* In 1907, the year of the meeting of the Second Conference, a new edition of the proceedings of the First Conference was printed bearing the title-page: *Conférence internationale de la paix. La Haye, 18 mai-29 juillet 1899. Ministère des affaires étrangères. Nouvelle édition, La Haye, Martinus Nijhoff, 1907.* Inasmuch as this latter edition is apparently the only one now generally accessible it has been used for the present translation. In the French edition each of the four parts is preceded by its table of contents, but for the convenience of American and English readers, the tables of contents of the several parts of the translation have been grouped at the beginning of the volume.

The proceedings of the Conference of 1907, as published by the Netherland Government, are contained in three large volumes bearing the title-page: *Deuxième conférence internationale de la paix. La Haye, 15 juin-18 octobre 1907. Actes et documents. Ministère des affaires étrangères. La Haye, Imprimerie nationale, 1907.* Although these volumes, in the translation, form the second, third and fourth volumes of the series, no change has been made in their numbers. Volume I is devoted to the plenary meetings of the Conference, Volume II to the meetings of the First Commission, and Volume III to the meetings of the Second, Third, and Fourth Commissions.

The numbers in brackets in both the text and footnotes of the translation indicate the folios of the French original. Editor's footnotes are likewise in brackets. The indexes to the original volumes have been greatly enlarged for the convenience of the general reader and students who may have occasion to consult them.

The Peace Conferences held at The Hague were the first truly international assemblies meeting in time of peace for the purpose of preserving peace, not of concluding a war then in progress. They marked an epoch in the history

of international relations. They showed on a large scale that international coöperation as possible, and they created institutions—imperfect it may be, as is the work of human hands,—which, when improved in the light of experience, will both by themselves and by the force of their example promote the administration of justice and the betterment of mankind.

JAMES BROWN SCOTT,  
*Director of the Division of International Law.*

PARIS, FRANCE,  
*February 28, 1919.*

# The International Peace Conference

The Hague, May 18—July 29, 1899

MINISTRY FOR FOREIGN AFFAIRS

NEW EDITION

THE HAGUE  
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*Mr. Léon Bourgeois presiding*

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**PART I**  
**PLENARY CONFERENCE**





[1]

## LIST OF THE GOVERNMENTS REPRESENTED AT THE PEACE CONFERENCE AT THE HAGUE AND THEIR DELEGATES

### GERMANY

His Excellency Count MÜNSTER, German Ambassador at Paris, first delegate, plenipotentiary.

The Baron von STENGEL, professor at the University of Munich, second delegate.

Dr. ZORN, Judicial Privy Councilor, professor at the University of Königsberg, scientific delegate.

Colonel GROSS von SCHWARZHOFF, Commandant of the 5th Infantry, No. 93, technical delegate.

Captain SIEGEL, Naval Attaché to the Imperial Embassy at Paris, technical delegate.

Mr. D'ERCKERT, Secretary of Legation, assistant secretary.

### AUSTRIA-HUNGARY

His Excellency Count R. von WELSERSHEIMB, Ambassador Extraordinary, first delegate, plenipotentiary.

Mr. A. OKOLICSÁNYI von OKOLICSNA, Envoy Extraordinary and Minister Plenipotentiary at The Hague, second delegate, plenipotentiary.

Mr. CAJETAN MÉREY von KAPOŠ-MÉRE, Counselor of Embassy and Chief of Cabinet of the Minister for Foreign Affairs, assistant delegate.

Mr. HEINRICH LAMMASCH, professor at the University of Vienna, assistant delegate.

Mr. VICTOR von KHUEPACH zu REID, ZIMMERLEHEN und HASLBURG, Lieutenant Colonel on the General Staff, assistant delegate.

Count STANISLAUS SOLTYK, Captain of Corvette, assistant delegate.

### BELGIUM

His Excellency Mr. AUGUSTE BEERNAERT, Minister of State, President of the Chamber of Representatives, delegate plenipotentiary.

[2] The Count de GRELLE ROGIER, Envoy Extraordinary and Minister Plenipotentiary at The Hague, delegate plenipotentiary.

The CHEVALIER DESCAMPS, Senator, delegate plenipotentiary.

Mr. MAURICE JOOSTENS, Counselor of Legation, secretary of the delegation.

**CHINA**

Mr. YANG YÜ, Envoy Extraordinary and Minister Plenipotentiary at St. Petersburg, delegate, plenipotentiary.

Mr. LOU TSENG-TSIANG, second delegate.

Mr. HOO WEI-TEH, second delegate.

Mr. HO YEN-CHENG, Counselor of Legation, assistant delegate.

Dr. KREYER, Counselor of Legation, interpreter.

**DENMARK**

Chamberlain FR. BILLE, Envoy Extraordinary and Minister Plenipotentiary at London, first delegate plenipotentiary.

Mr. J. G. F. VON SCHNACK, Colonel of Artillery, ex-Minister for War, second delegate plenipotentiary.

Baron OTTO REEDTZ-THOTT, Secretary of the Ministry for Foreign Affairs, attaché of the delegation.

**SPAIN**

His Excellency Duque DE TETUÁN, ex-Minister for Foreign Affairs, first delegate plenipotentiary.

Mr. W. RAMIREZ DE VILLA URRUTIA, Envoy Extraordinary and Minister Plenipotentiary at Brussels, delegate plenipotentiary.

Mr. ARTURO DE BAGUER, Envoy Extraordinary and Minister Plenipotentiary at The Hague, delegate plenipotentiary.

The Count DE SERRALLO, Military Attaché to the Spanish Legation at Brussels, assistant delegate.

Mr. CRESPO, Secretary of Embassy, secretary of the delegation.

**THE UNITED STATES OF AMERICA**

His Excellency Mr. WHITE, United States Ambassador at Berlin, delegate plenipotentiary.

Mr. STANFORD NEWEL, Envoy Extraordinary and Minister Plenipotentiary at The Hague, delegate plenipotentiary.

The Honorable SETH LOW, president of the Columbia University at New York, delegate plenipotentiary.

Captain A. T. MAHAN, United States Navy, delegate plenipotentiary.

Mr. W. CROZIER, Captain of Artillery, delegate plenipotentiary.

Mr. F. W. HOLLS, advocate at New York, delegate and secretary of the delegation.

Mr. THOMAS M. MACGRATH, secretary of the delegation.

Mr. JAMES HARRIS VICKERY, secretary of the delegation.

Mr. THOMAS MORRISON, secretary of the delegation.

**THE UNITED STATES OF MEXICO**

Mr. DE MIER, Envoy Extraordinary and Minister Plenipotentiary at Paris, delegate plenipotentiary.

Mr. ZENIL, Minister Resident at Brussels, delegate plenipotentiary.

**FRANCE**

Mr. LÉON BOURGEOIS, ex-President of Council, ex-Minister for Foreign Affairs, member of the Chamber of Deputies, first delegate, plenipotentiary.

Mr. GEORGES BIHOUD, Envoy Extraordinary and Minister Plenipotentiary at The Hague, second delegate, plenipotentiary.

The Baron D'ESTOURNELLES DE CONSTANT, Minister Plenipotentiary, member of the Chamber of Deputies, third delegate, plenipotentiary.

Mr. PÉPHAU, Rear Admiral, technical delegate.

[3] Mr. MOUNIER, General of Brigade, technical delegate.

Mr. LOUIS RENAULT, professor of the Faculty of Law at Paris, technical delegate.

Mr. ALBERT LEGRAND, Secretary of Embassy of Second Class, secretary of the delegation, secretary of the conference.

Mr. A. BOPPE, Secretary of Embassy of Second Class, secretary of the delegation.

Mr. M. JAROUSSE DE SILLAC, Attaché of Embassy, secretary of the delegation, secretary of the conference.

Mr. O. HOMBERG, Attaché of Embassy, secretary of the delegation.

Mr. LOUIS LEGENDRE, assistant secretary.

Baron PICHON, Lieutenant of Cavalry, assistant secretary.

**GREAT BRITAIN AND IRELAND**

His Excellency Sir JULIAN PAUNCEFOTE, G.C.B., G.C.M.G., Ambassador of the United Kingdom at Washington, first delegate, plenipotentiary.

Sir HENRY HOWARD, K.C.M.G., C.B., Envoy Extraordinary and Minister Plenipotentiary at The Hague, second delegate, plenipotentiary.

Sir JOHN A. FISHER, K.C.B., Vice Admiral, technical delegate.

Sir J. C. ARDAGH, K.C.I.E., C.B., Major General, technical delegate.

Lieutenant Colonel C. À COURT, Military Attaché at Brussels and The Hague, assistant technical delegate.

Mr. RICHARD PONSONBY MAXWELL, first secretary of the delegation.

Mr. ARTHUR PEEL, second secretary of the delegation.

Mr. RONALD JAMES HAMILTON, third secretary of the delegation.

**GREECE**

Mr. DELYANNI, ex-President of the Council, ex-Minister for Foreign Affairs, Envoy Extraordinary and Minister Plenipotentiary at Paris, delegate plenipotentiary.

Mr. ALEXANDRE MERCATI, Secretary of the Minister.

## LIST OF DELEGATES

## ITALY

His Excellency Count NIGRA, Italian Ambassador at Vienna, Senator of the Kingdom, first delegate, plenipotentiary.

Count A. ZANNINI, Envoy Extraordinary and Minister Plenipotentiary at The Hague, second delegate, plenipotentiary.

Commander GUIDO POMPIJ, Deputy in the Italian Parliament, third delegate, plenipotentiary.

The Chevalier LOUIS ZUCCARI, Major General, technical delegate.

The Chevalier AUGUSTE BIANCO, Captain, Naval Attaché to the Royal Embassy at London, technical delegate.

Baron CHARLES FASCIOTTI, Attaché of Embassy, assistant secretary.

Mr. ERNEST ARTOM, Attaché of Legation, assistant secretary.

## JAPAN

The Baron HAYASHI, Envoy Extraordinary and Minister Plenipotentiary at St. Petersburg, first delegate, plenipotentiary.

Mr. I. MORONO, Envoy Extraordinary and Minister Plenipotentiary at Brussels, second delegate, plenipotentiary.

Colonel UEHARA, technical delegate.

Captain SAKAMOTO, Japanese Navy, technical delegate.

Mr. NAGAO ARIGA, professor of international law at the Superior Military School and the Naval School of Tokio, technical delegate.

Mr. NISHII, secretary of the delegation.

Mr. HAGIWARA, secretary of the delegation.

## LUXEMBURG

His Excellency Mr. EYSCHEN, Minister of State, President of the Grand Ducal Government, delegate plenipotentiary.

The Count DE VILLERS, Chargé d'Affaires at Berlin, delegate plenipotentiary.

## MONTENEGRO

[4] See Russia.

## NETHERLANDS

Jonkheer A. P. C. VAN KARNEBEEK, ex-Minister for Foreign Affairs, member of the Second Chamber of the States-General, delegate plenipotentiary.

General J. C. C. DEN BEER POORTUGAEL, ex-Minister for War, member of the Council of State, delegate plenipotentiary.

Mr. T. M. C. ASSER, member of the Council of State, delegate plenipotentiary.

Mr. E. N. RAHUSEN, member of the First Chamber of the States-General, delegate plenipotentiary.

Captain A. P. TADEMA, Chief of the Staff of the Netherland Navy, technical delegate.

**PERSIA**

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MIRZA SAMAD KHAN, MOMTAS-ES-SALTANEH, Counselor of Legation at St. Petersburg, assistant delegate.

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Baron G. DE LEVI, secretary of the delegation.

**PORTUGAL**

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Mr. D'ORNELLAS DE VASCONCELLOS, Envoy Extraordinary and Minister Plenipotentiary at St. Petersburg, delegate plenipotentiary.

The Count DE SELIR, Envoy Extraordinary and Minister Plenipotentiary at The Hague, delegate plenipotentiary.

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Captain AUGUSTO DE CASTILHO, technical delegate.

Mr. JOSÉ RIBEIRO DA CUNHA, First Secretary of Legation, secretary of the delegation.

**ROUMANIA**

Mr. ALEXANDRE BELDIMAN, Envoy Extraordinary and Minister Plenipotentiary at Berlin, first delegate, plenipotentiary.

Mr. JEAN N. PAPINIU, Envoy Extraordinary and Minister Plenipotentiary at The Hague, second delegate, plenipotentiary.

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**RUSSIA**

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Mr. BASILY, Councilor of State, Chamberlain, Director of the First Department of the Imperial Ministry for Foreign Affairs, delegate plenipotentiary.

Mr. RAFFALOVICH, Councilor of State, Agent in France of the Imperial Ministry for Finance, technical delegate.

Mr. GILINSKY, Colonel on the General Staff, technical delegate.

Count BARANTZEW, Colonel of Horse Artillery of the Guard, technical delegate.

Captain SCHEINE, Russian Naval Agent at Paris, technical delegate.

Mr. OVTCHINNIKOW, Naval Lieutenant, professor of jurisprudence, technical delegate.

Mr. PRIKLONSKY, Gentlemen of the Chamber, Head of Division of the First Department of the Imperial Ministry for Foreign Affairs, secretary of the delegation.

[5] Mr. N. A. GOURKO-ROMEIKO, Second Secretary of Embassy, secretary of the delegation.

Baron M. F. DE SCHILLING, Third Secretary of the Imperial Ministry for Foreign Affairs, secretary of the delegation.

Mr. HESSEN, Head of the Bureau of the Imperial Ministry of Justice, secretary of the delegation.

Mr. BIRILEFF, secretary of the technical naval delegate.

### SERBIA

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Colonel MASCHINE, Envoy Extraordinary and Minister Plenipotentiary at Cetinje, delegate plenipotentiary.

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### SIAM

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Mr. CH. CORRAGONI D'ORELLI, Counselor of Legation, third delegate.

Mr. EDOUARD ROLIN, Siamese Consul General in Belgium, fourth delegate.

Mr. J. A. N. PATIJN, attaché of the delegation.

Mr. PHRA JAYASURINDR, attaché of the delegation.

### SWEDEN AND NORWAY

Baron BILDT, Envoy Extraordinary and Minister Plenipotentiary at the Royal Court of Italy, delegate plenipotentiary.

Colonel P. H. E. BRÄNDSTRÖM, Commander of the First Regiment of the Guard, technical delegate.

Mr. C. A. M. DE HJULHAMMAR, Commander in the Royal Navy, technical delegate.

Mr. W. KONOW, President of the Odelsting, technical delegate.

Major General J. J. THAULOW, Surgeon General of the Army and Navy, technical delegate.

Mr. F. DE RAPPE, Secretary of the Ministry for Foreign Affairs, secretary of the delegation.

### SWITZERLAND

Dr. ARNOLD ROTH, Envoy Extraordinary and Minister Plenipotentiary at Berlin, delegate plenipotentiary.

Colonel ARNOLD KÜNZLI, National Councilor, delegate.

Mr. EDOUARD ODIER, National Councilor, delegate, plenipotentiary.

Mr. A. SUTER, Assistant Secretary of the Political Federal Department, secretary of the delegation.

**TURKEY**

His Excellency TURKHAN PASHA, ex-Minister for Foreign Affairs, member of the Council of State, first delegate, plenipotentiary.

His Excellency NOURY BEY, Secretary General to the Ministry for Foreign Affairs, delegate plenipotentiary.

His Excellency ABDULLAH PASHA, General of Division of the Staff, delegate plenipotentiary.

His Excellency MEHEMED PASHA, Rear Admiral, delegate plenipotentiary.

YOUSSEF BEY, Head of the Cabinet of the Ministry for Foreign Affairs, secretary of the delegation.

AGHIAH BEY, Assistant Head of the Bureau of Translation of the Ministry for Foreign Affairs, secretary of the delegation.

DJEVAD BEY, Lieutenant Colonel, secretary of the delegation.

[6] CHERIF BEY, Assistant to Legal Councillors of the sublime Porte, secretary to the delegation.

**BULGARIA**

Dr. D. STANCIOFF, Diplomatic Agent at St. Petersburg, first delegate, plenipotentiary.

Major CHR. HESSAPTCHIEFF, Military Attaché at Belgrade, second delegate, plenipotentiary.



## BUREAU OF THE CONFERENCE

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*President:* His Excellency Mr. STAAL.

*Vice President:* Jonkheer A. P. C. VAN KARNEBEEK.

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### SECRETARIAT

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*Assistant secretary general:* Mr. RAFFALOVICH, Councilor of State, technical delegate of Russia;

*Secretaries:*

Mr. ALBERT LEGRAND, Secretary of Embassy of France;

Mr. EDOUARD DE GRELLÉ ROGIER, First Secretary of the Legation of Belgium;

Chevalier W. DE RAPPARD, Secretary of Legation of the Netherlands;

Jonkheer A. G. SCHIMMELPENNINCK, Secretary of Legation of the Netherlands;

Mr. MAX JAROUSSE DE SILLAC, Attaché of Embassy of France;

Jonkheer J. J. ROCHUSSEN, Assistant Head of the Bureau of the Ministry for Foreign Affairs at The Hague;

*Technical secretaries:*

Mr. G. J. C. A. POP, Captain on the Staff;

Mr. C. E. DITTLINGER, Lieutenant of the Royal Navy.

### ASSISTANTS TO THE SECRETARIAT

Mr. D'ERCKERT, Secretary of the German Legation.

Jonkheer H. A. VAN KARNEBEEK.

[7]

## OPENING MEETING

MAY 18, 1899

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The Governments of Germany, the United States of America, Austria-Hungary, Belgium, China, Denmark, Spain, France, the United Kingdom of Great Britain and Ireland, Greece, Italy, Japan, Luxemburg, Mexico, Montenegro, the Netherlands, Persia, Portugal, Roumania, Russia, Serbia, Siam, Sweden and Norway, Switzerland, Turkey and Bulgaria, having, on the proposal of the Government of His Majesty the Emperor of All the Russias, and on the invitation of Her Majesty the Queen of the Netherlands, engaged to seek the most effective means of ensuring to the peoples a lasting peace, and of limiting the progressive development of military armaments, the delegates of the said Governments are united in conference to-day May 18, 1899, at 2 o'clock in the Palace in the Wood.

Present :

*For Germany:*

His Excellency Count MÜNSTER, German Ambassador at Paris, first delegate.

The Baron VON STENGEL, professor at the University of Munich, second delegate.

Dr. ZORN, Judicial Privy Councilor, professor at the University of Königsberg, scientific delegate.

Colonel GROSS VON SCHWARZHOFF, Commandant of the 5th Regiment of Infantry, No. 94, technical delegate.

Captain SIEGEL, Naval Attaché to the Imperial Embassy at Paris, technical delegate.

*For the United States of America:*

His Excellency Mr. WHITE, United States Ambassador at Berlin, delegate.

Mr. STANFORD NEWEL, Envoy Extraordinary and Minister Plenipotentiary at The Hague, delegate.

The Honorable SETH LOW, president of the Columbia University at New York, delegate.

Captain A. T. MAHAN, United States Navy, delegate.

Mr. W. CROZIER, Captain of Artillery, delegate.

*For Austria-Hungary:*

His Excellency Count R. VON WELSERSHEIMB, Ambassador Extraordinary, first delegate.

Mr. A. OKOLICSÁNYI VON OKOLICSNA, Envoy Extraordinary and Minister Plenipotentiary at The Hague, second delegate.

Mr. CAJETAN MÉREY VON KAPOS-MÉRE, Counselor of Embassy and Chief of Cabinet of the Minister for Foreign Affairs, assistant delegate.

Mr. HEINRICH LAMMASCH, professor at the University of Vienna, assistant delegate.

Mr. VICTOR VON KHUEPACH ZU REID, ZIMMERLEHEN UND HASLBURG, Lieutenant Colonel on the General Staff, assistant delegate.

Count STANISLAUS SOLTYK, Captain of Corvette, assistant delegate.

*For Belgium:*

His Excellency Mr. AUGUSTE BEERNAERT, Minister of State, President of the Chamber of Representatives, delegate.

The Count DE GRELLE ROGIER, Envoy Extraordinary and Minister Plenipotentiary at The Hague, delegate.

The Chevalier DESCAMPS, Senator, delegate.

*For China:*

Mr. YANG YÜ, Envoy Extraordinary and Minister Plenipotentiary at St. Petersburg, delegate.

[8] *For Denmark:*

Chamberlain FR. BILLE, Envoy Extraordinary and Minister Plenipotentiary at London, first delegate.

Mr. J. G. F. VON SCHNACK, Colonel of Artillery, ex-Minister for War, second delegate.

*For Spain:*

His Excellency Duque DE TETUÁN, ex-Minister for Foreign Affairs, first delegate.

Mr. W. RAMIREZ DE VILLA URRUTIA, Envoy Extraordinary and Minister Plenipotentiary at Brussels, delegate.

Mr. ARTURO DE BAGUER, Envoy Extraordinary and Minister Plenipotentiary at The Hague, delegate.

The Count DE SERRALLO, Colonel, Military Attaché to the Spanish Legation at Brussels, technical delegate.

*For France:*

Mr. LÉON BOURGEOIS, ex-President of Council, ex-Minister for Foreign Affairs, member of the Chamber of Deputies, first delegate.

Mr. GEORGES BIHOUD, Envoy Extraordinary and Minister Plenipotentiary at The Hague, second delegate.

The Baron d'ESTOURNELLES DE CONSTANT, Minister Plenipotentiary, member of the Chamber of Deputies, third delegate.

Mr. PÉPHAU, Rear Admiral, technical delegate.

Mr. MOUNIER, General of Brigade, technical delegate.

Mr. LOUIS RENAULT, professor of the Faculty of Law at Paris, technical delegate.

*United Kingdom of Great Britain and Ireland:*

His Excellency Sir JULIAN PAUNCEFOTE, G.C.B., G.C.M.G., Ambassador of the United Kingdom at Washington, first delegate.

Sir HENRY HOWARD, K.C.M.G., C.B., Envoy Extraordinary and Minister Plenipotentiary at The Hague, second delegate.

Sir JOHN A. FISHER, K.C.B., Vice Admiral, technical delegate.

Sir J. C. ARDAGH, Major General, technical delegate.

*For Greece:*

Mr. DELYANNI, Envoy Extraordinary and Minister Plenipotentiary at Paris, delegate.

*For Italy:*

His Excellency Count NIGRA, Italian Ambassador at Vienna, Senator of the Kingdom, first delegate.

Count A. ZANNINI, Envoy Extraordinary and Minister Plenipotentiary at The Hague, second delegate.

The Chevalier LOUIS ZUCCARI, Major General, technical delegate.

The Chevalier AUGUSTE BIANCO, Captain, Naval Attaché to the Royal Embassy at London, technical delegate.

*For Japan:*

The Baron HAYASHI, Envoy Extraordinary and Minister Plenipotentiary at St. Petersburg, first delegate.

Mr. I. MOTONO, Envoy Extraordinary and Minister Plenipotentiary at Brussels, second delegate.

Colonel UEHARA, technical delegate.

Captain SAKAMOTO, Japanese Navy, technical delegate.

*For Luxemburg:*

His Excellency Mr. EYSCHEN, Minister of State, President of the Grand Ducal Government, delegate.

The Count DE VILLERS, Chargé d'Affaires at Berlin, delegate.

*For Mexico:*

Mr. DE MIER, Envoy Extraordinary and Minister Plenipotentiary at Paris, delegate.

Mr. ZENIL, Minister Resident at Brussels, delegate.

*For Montenegro:*

The delegation of Russia :

*For the Netherlands:*

Jonkheer A. P. C. VAN KARNEBEEK, ex-Minister for Foreign Affairs, member of the Second Chamber of the States-General, delegate.

General J. C. C. DEN BEER POORTUGAEL, ex-Minister for War, member of the Council of State, delegate.

Mr. T. M. C. ASSER, member of the Council of State, delegate.

Mr. E. N. RAHUSEN, member of the First Chamber of the States-General, delegate.

Mr. A. P. TADEMA, Chief of the Staff of the Netherland Navy, technical delegate.

[9] *For Persia:*

General MIRZA RIZA KHAN, ARFA-UD-DOVLEH, Envoy Extraordinary and Minister Plenipotentiary at St. Petersburg, first delegate.

MIRZA SAMAD KHAN, MOMTAS-ES-SALTANEH, Counselor of Legation at St. Petersburg, assistant delegate.

*For Portugal:*

The Count DE MACEDO, Envoy Extraordinary and Minister Plenipotentiary at Madrid, delegate.

Mr. D'ORNELLAS DE VASCONCELLOS, Envoy Extraordinary and Minister Plenipotentiary at St. Petersburg, delegate.

The Count DE SELIR, Envoy Extraordinary and Minister Plenipotentiary at The Hague, delegate.

Captain AYRES D'ORNELLAS, technical delegate.

*For Roumania:*

Mr. ALEXANDRE BELDIMAN, Envoy Extraordinary and Minister Plenipotentiary at Berlin, first delegate.

Mr. JEAN N. PAPINIU, Envoy Extraordinary and Minister Plenipotentiary at The Hague, second delegate.

Aide-de-Camp Colonel CONSTANTIN COANDA, Director of Artillery at the Ministry for War, technical delegate.

*For Russia:*

His Excellency Mr. STAAL, Privy Councilor, Russian Ambassador at London, first delegate.

Mr. MARTENS, permanent member of the Council of the Imperial Ministry for Foreign Affairs, Privy Councilor, delegate.

Mr. BASILY, Councilor of State, Chamberlain, Director of the First Department of the Imperial Ministry for Foreign Affairs, delegate.

Mr. RAFFALOVICH, Councilor of State, Agent in France of the Imperial Ministry for Finance, technical delegate.

Mr. GILINSKY, Colonel on the General Staff, technical delegate.

Count BARANTZEW, Colonel of Horse Artillery of the Guard, technical delegate.

Captain SCHEINE, Russian Naval Agent at Paris, technical delegate.

Mr. OVTCHINNIKOW, Naval Lieutenant, professor of jurisprudence, technical delegate.

*For Serbia:*

Mr. MIYATOVITCH, Envoy Extraordinary and Minister Plenipotentiary at London, delegate.

Colonel MASCHINE, Envoy Extraordinary and Minister Plenipotentiary at Cettinje, delegate.

Dr. VOISLAVE VELJKOVITCH, professor of the Faculty of Law at Belgrade, assistant delegate.

*For Siam:*

Mr. PHYA SURIYA NUVATR, Envoy Extraordinary and Minister Plenipotentiary at Paris, first delegate.

Mr. PHYA VISUDDHA SURIYA SAKDI, Envoy Extraordinary and Minister Plenipotentiary at London, second delegate.

Mr. CH. CORRAGONI D'ORELLI, Counselor of Legation, third delegate.

Mr. EDOUARD ROLIN, Siamese Consul General in Belgium, fourth delegate.

*For Sweden and Norway:*

Baron BILDT, Envoy Extraordinary and Minister Plenipotentiary at the Royal Court of Italy, delegate.

Colonel P. H. E. BRÄNDSTRÖM, Commander of the 1st Regiment of the Guard, technical delegate.

Commander C. A. M. DE HJULHAMMAR, Royal Swedish Navy, technical delegate.

Mr. W. KONOW, President of the Odelsting, technical delegate.

Major General J. J. THAULOW, Surgeon General of the Army and Navy, technical delegate.

*For Switzerland:*

Dr. ARNOLD ROTH, Envoy Extraordinary and Minister Plenipotentiary at Berlin, delegate.

Colonel ARNOLD KÜNZLI, National Councilor, delegate.

[10] Mr. EDOUARD ODIER, National Councilor, delegate.

*For Turkey:*

His Excellency TURKHAN PASHA, ex-Minister for Foreign Affairs, member of the Council of State, first delegate.

His Excellency NOURY BEY, Secretary General to the Ministry for Foreign Affairs, delegate.

His Excellency ABDULLAH PASHA, General of Division of the Staff, delegate.

His Excellency MEHEMED PASHA, Rear Admiral, delegate.

*For Bulgaria:*

Dr. DIMITRI I. STANCIOFF, Diplomatic Agent at St. Petersburg, first delegate.

Major CHR. HESSAPTCHIEFF, Military Attaché at Belgrade, second delegate.

His Excellency Mr. de Beaufort, Minister of Foreign Affairs of the Netherlands, opens the meeting and makes the following address:

In the name of Her Majesty my august sovereign, I have the honor to bid you welcome and to express here my profound respect for His Majesty the Emperor of All the Russias and my heartfelt gratitude to him for the great honor he has

shown our country in designating The Hague as the meeting-place of the Peace Conference.

In taking the noble initiative, which has been acclaimed by the whole civilized world, it was the desire of His Majesty the Emperor of All the Russias to realize the wish of one of his most illustrious predecessors, Emperor Alexander I—that all the sovereigns and all the nations of Europe might agree to live together like brothers and to help each other in their mutual needs. Inspired by these noble traditions of his august ancestor, His Majesty proposed to all the Governments whose representatives are here assembled the meeting of a Conference which should endeavor to discover a way to limit these never-ending armaments and to prevent the calamities which threaten the entire world.

The opening day of this Conference will be without dispute one of the memorable days in the history of the century which is about to close. It coincides with a festival which all His Majesty's subjects celebrate as a national holiday, and in joining with all my heart in every wish for the happiness of this magnanimous sovereign, I shall venture to act as the interpreter of the wishes of the whole civilized world in expressing the hope that His Majesty may see his generous plans realized by the efforts of this Conference and may look back upon this day as one of the happiest of his reign.

Her Majesty my august sovereign, moved by the same sentiments as inspired His Majesty the Emperor of All the Russias, has been pleased to place at the disposal of this Conference the most beautiful historic monument which she possesses. The hall in which you are assembled was decorated by the best artists of the seventeenth century and was erected by the widow of Prince FREDERICK HENRY to the memory of her noble husband. Among the groups and allegorical figures which will call forth your admiration is one associated with the Peace of Westphalia which deserves your special attention. It is the picture which represents Peace entering this hall to close the temple of Janus. I hope, gentlemen, that this beautiful allegory will prove to be a good omen for your labors and that after having completed them you will be able to say that Peace, which art brought into this hall, has sallied forth to shower her blessings upon the whole human race. (*Unanimous assent.*)

I have the honor to make two proposals: first, that we offer His Majesty the Emperor of All the Russias our respectful congratulations by telegraph in the following terms:

The Peace Conference lays at the feet of Your Majesty its respectful congratulations on the occasion of your birthday and expresses the sincere desire to cooperate in accomplishing the great and noble work in which Your Majesty has generously taken the initiative, and for which the Conference begs Your Majesty to accept its humble and profound gratitude. (*Unanimous assent.*)

I do not doubt that my second proposal will likewise meet with your unanimous approval. I venture, gentlemen, to express the wish that the Ambassador of His Majesty the Emperor of All the Russias, his Excellency Mr. STAAL, whose wide experience in practical affairs and whose eminent qualities will do much to facilitate the noble work you are about to undertake, be chosen president of this assembly.

This proposal is unanimously adopted.

His Excellency Mr. Staal accepts the presidency and makes the following address:

[11] GENTLEMEN: My first duty is to express to his Excellency the Minister of Foreign Affairs of the Netherlands my gratitude for the noble words he has just uttered concerning my august master. His Majesty will be deeply touched by the lofty sentiments with which Mr. DE BEAUFORT was inspired, as well as by the spontaneity with which the members of this assembly have joined with him.

If it was on the initiative of the Emperor of Russia that the Conference has met, we owe it to Her Majesty the Queen of the Netherlands that we are assembled in her capital. It is a happy presage for the success of our labors that we are gathered together under the auspices of a young sovereign whose charm is felt far and wide and whose heart, ever open to all that is generous, has shown so much sympathy for the cause which brings us here. In this calm atmosphere of The Hague, in the midst of a nation which is so conspicuous a factor in world-wide civilization, we have before our eyes a striking example of what valor, patriotism, and untiring energy can do for the good of nations. It was upon the historic soil of the Netherlands that the greatest problems of the political life of States were discussed; here, it may be said, was the cradle of the science of international law; here for centuries the principal negotiations between European Powers have been conducted. Finally, it was here that the remarkable compromise was signed which brought about a "truce" in the bloody strife of State with State. We are therefore in the midst of historic tradition.

I have further to thank the Minister of Foreign Affairs of the Netherlands for the flattering—indeed too flattering—words in which he has referred to me. I am sure that I express the sentiments of every member of this high assembly in assuring his Excellency Mr. DE BEAUFORT how happy we should have been to see him preside over our meetings. He was entitled to the presidency not only because of the precedents followed on similar occasions, but also because of the qualities he has shown as the eminent statesman who now directs the foreign policy of the Netherlands. It would, moreover, have been a further homage which we should have liked to pay to the august sovereign who has deigned to extend to us her gracious hospitality.

As for myself, I can only consider that I am chosen because I am the plenipotentiary of the Emperor my master, the august initiator of the Conference idea. In this capacity I accept with profound gratitude the high honor bestowed upon me by the Minister of Foreign Affairs in proposing me for the presidency and by the members of the Conference in ratifying this selection. I shall make every effort to justify this mark of confidence, but I fully realize that the advanced age which I have reached is, alas! a sad privilege and a feeble support. I hope at least, gentlemen, that it will entitle me to your indulgence.

I now propose that we send to Her Majesty the Queen, whose grateful guests we are, the message which I am about to read:

The members of the Conference, assembled for the first time in the beautiful Palace in the Wood, hasten to lay their best wishes at Your Majesty's feet and to beg you to receive the homage of their gratitude for the hospitality which you, Madam, have so graciously deigned to offer them.



I propose that we confer upon his Excellency the Minister of Foreign Affairs of the Netherlands the honorary presidency of the International Peace Conference, and that we make Jonkheer VAN KARNEBEEK, first delegate of the Netherlands, vice president of this assembly. (*Assent.*)

At the proposal of the PRESIDENT, the Conference nominates for the composition of its secretariat:

As secretary general: Jonkheer J. C. N. VAN EYS, Minister Resident of Her Majesty the Queen of the Netherlands.

As assistant secretary general: Mr. RAFFALOVICH, Councilor of State, technical delegate of Russia.

As secretaries:

Mr. ALBERT LEGRAND, Secretary of Embassy of France;

Mr. EDOUARD DE GRELLÉ ROGIER, First Secretary of Legation of Belgium; Chevalier W. DE RAPPARD, Secretary of Legation of the Netherlands;

Jonkheer A. G. SCHIMMELPENNINCK, Secretary of Legation of the Netherlands;

Mr. MAX JAROUSSE DE SILLAC, Attaché of Embassy of France;

Jonkheer J. J. ROCHUSSEN, Assistant Head of the Bureau of the Ministry for Foreign Affairs at The Hague.

As technical secretaries:

Mr. G. J. C. A. POP, Captain on the Staff;

Mr. C. E. DITTLINGER, Lieutenant in the Royal Navy.

[12] The PRESIDENT consults the Conference as to the advisability of keeping secret its deliberations in the plenary meetings as well as in the meetings of the commissions.

This proposal is adopted.

The meeting adjourns at 2:30 o'clock.

## SECOND MEETING

MAY 20, 1899

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His Excellency Mr. Staal presiding.

The meeting opens at 11 o'clock.

The **President** reads the telegram that Her Majesty the Queen has been good enough to address to him in reply to the message of the Conference.

HAUSBADEN, *May 19, 1899.*

In thanking your Excellency, as well as the members of the Peace Conference, for the sentiments expressed in your telegram, I take pleasure in seizing this opportunity to repeat my wishes of welcome to my country. I most sincerely trust that, with the help of God, the work of the Conference will realize the generous design of your august sovereign.

(Signed) WILHELMINA.

(*Applause.*)

The **President** then reads the telegram that His Majesty the Emperor of Russia has been good enough to address in reply to the telegram of the Minister of Foreign Affairs of the Netherlands.

ST. PETERSBURG, *May 19, 1899.*

The Emperor begs you to extend to the Conference his sincere thanks and most cordial wishes.

My august master charges me to advise your Excellency that His Majesty appreciates the telegram which you have addressed to him.

(Signed) COUNT MOURAVIEFF.

(*Applause.*)

The **Secretary General** apprises the Conference of an invitation from the Government of the Netherlands to an artistic celebration to take place June 17.

The **President** states that at the time of inaugurating the work of the Conference, he deems it useful to sum up its design and general purposes, and he expresses himself in these terms:

To seek the most efficacious means of assuring to all peoples the blessings of a real and lasting peace, such, in the words of the circular of August 12, is the chief aim of our deliberations.

The name "Peace Conference," which the popular mind, outstripping a decision by the Governments in this respect, has given to our meeting, well indicates the essential object of our labors. The Peace Conference cannot fail in the mission incumbent upon it; its deliberations must lead to a tangible result which the whole human race confidently expects.

The eagerness with which every Power accepted the proposal contained in

the Russian circulars is the most eloquent witness to the favor which peaceful ideas have found in the eyes of all. It is therefore my pleasant duty to request the delegates of all the States here represented to transmit to their respective Governments the repeated expression of the Russian Government's thanks.

The very membership of this assembly is a sure guaranty of the spirit in [13] which we shall approach the task entrusted to us. The Governments are represented here by statesmen who have taken active part in shaping the destinies of their countries; by eminent diplomats who have handled the most important matters and who all know that the first need of nations is the maintenance of peace. Beside them are scholars who enjoy a well-deserved renown in the field of international law. The general and higher officers of the army and navy who will assist us in our labors will give us the benefit of their great technical knowledge.

The mission of diplomacy, as we all know, is to prevent and to smooth over disputes between States; to moderate rivalries; to conciliate divergent interests; to remove misunderstandings and to substitute good understanding for disagreement.

Let me say that, following a general law, diplomacy is no longer merely an art in which personal ability plays an exclusive part; its tendency is to become a science which shall have fixed rules for settling international disputes. Such at the present time is the ideal which it should have before its eyes, and it cannot be disputed that great progress will have been made if diplomacy succeeds in establishing in this Conference some of the rules of which I have just spoken. Accordingly, we shall devote ourselves especially to the generalization and codification of arbitral practice, and of mediation or good offices. These ideas are, so to speak, the very essence of our task, the general goal toward which we are to direct our efforts: *the prevention of conflicts by peaceful means*. It is not for us to enter into the domain of Utopia. In the work which we are about to undertake we must consider what is possible; we must not devote ourselves to the pursuit of abstractions. Without sacrificing any of our further hopes, we must remain in the land of reality, sound its very depths, so as to lay solid foundations and build on a practical basis.

Now, what does reality show us? We perceive that there is a community of material and moral interests between nations, which is constantly increasing. The ties which bind the various branches of the great human family are ever drawing them closer to each other. If a nation wished to remain isolated, it could not. It is one of the gear-wheels of a living mechanism, fruitful in blessings for all. It is part of a single organism. Rivalries doubtless exist; but do they not seem to be rather in the economic field, in the field of great commercial expansion, arising from the same need to spread abroad the surplus energy which cannot find sufficient employment in the mother country? Rivalry in this sense can indeed do good, provided the ideal of justice and the lofty sentiment of the great brotherhood of man soar above it.

If, therefore, nations are bound together by so many ties, would it not be well to see what all this means? When a dispute arises between two or more nations, the others, without being directly involved, are seriously affected. The effects of an international conflict in any quarter of the globe echo far and wide in every direction. That is why third parties cannot remain indifferent to such a conflict. They must bring their powers of conciliation into play to stop it.

These truths are not new. At all times there have been thinkers to suggest them, statesmen to apply them; but they claim our attention more than ever at the present time, and the fact that they have been proclaimed by an assembly such as ours will mark an important date in the history of mankind.

Peace is the crying need of the nations, and we owe it to mankind, we owe it to the Governments which have entrusted us with their powers and in whose care is the welfare of their people, we owe it to ourselves to do a useful work by specifying the method of employing some of the means of assuring peace.

Arbitration and mediation must be included among these means. Diplomacy long ago admitted them in its practice, but diplomacy has not laid down definite rules for applying them; it has not specified the cases to which they may be applied. That is the noble work upon which we are about to direct our energies, sustained by the conviction that we are laboring for the good of all mankind along the road which former generations have laid out for us.

But inasmuch as we are firmly resolved to keep away from wild schemes, inasmuch as we recognize that our present task, great as it is, has its limitations, we must also consider another side of the question.

If the possibility of armed conflict between nations cannot be absolutely eliminated, it would still be a labor in behalf of humanity to mitigate the horrors of war. The Governments of civilized States have already made international agreements which have marked important stages. It is our task to mark new stages, and in this category of questions the cooperation of the many competent men who are present at this meeting cannot but be most valuable.

There are, moreover, certain matters, very far-reaching and very difficult [14] to handle, which likewise pertain to the maintenance of peace, and which, in the opinion of the Imperial Russian Government, might come within the scope of the Conference's investigations. It might be well to investigate whether a limitation of increasing armaments is not required for the well-being of nations. In this matter, it is for the Governments to weigh in their wisdom the interests which they have in charge.

Such, gentlemen, are the essential ideas which, it would appear, should guide us in our deliberations.

We shall, I am sure, examine them in a spirit at once high-minded and sincerely conciliatory, so as to proceed along the road which leads to more enduring peace. We shall thus perform a useful work for which future generations will thank the sovereigns and heads of States represented in this hall.

One of our tasks, gentlemen, should be, in order to assure the progress of our work, to proceed to a division of the labor, a distribution of the burden.

I venture, therefore, to submit the following plan for your approval:

Three Commissions shall be constituted:

The First Commission shall take charge of Articles 1, 2, 3, and 4 of the circular of December 30, 1898.

The Second Commission shall take charge of Articles 5, 6, and 7 of the said circular.

The Third Commission shall take charge of Article 8 of the same circular.

Each Commission may be subdivided into subcommissions.

It is understood that the Conference does not consider itself authorized to investigate any question other than those mentioned above. In case of doubt, the

Conference shall decide whether or not such and such a proposition brought up in the Commissions comes within the scope of these questions.

Each State shall have the right to be represented in each of the Commissions.

The first delegates shall designate the members of the respective delegations who are to be members of each Commission. These members may serve on two or more Commissions.

As is the rule in plenary meetings, each State shall have only one vote in each Commission.

The delegates representing the Governments may take part in all of the meetings of the Commissions.

Technical and scientific delegates may attend the plenary meetings of the Conference.

The Commissions shall constitute their own bureaus and shall regulate the order of their labors.

The proposal of the **PRESIDENT** is adopted.

The **President** asks the heads of the delegations kindly to communicate to the bureau the names of the delegates who will be nominated to take part in the different commissions.

He then asks those of his colleagues who have not already done so, kindly to remit their full powers to the bureau of the Conference. As to those who are not yet in possession of their full powers, he asks them kindly to remit them to the bureau as they are received.

The **PRESIDENT**: We are bound to keep secret our deliberations in the plenary meetings as well as in the meetings of the Commissions. Without breaking this very important rule, it is well, as far as possible, to take into account the legitimate curiosity of the public as to our work, and I ask you kindly to authorize the bureau, under the superintendence of your president, to organize a press bureau. (*Assent.*)

The minutes of the opening meeting are adopted.

The **President** announces that the members of the Conference will be advised by the secretariat of the date and hour of the next meeting.

The meeting adjourns at 11:45 o'clock.

## THIRD MEETING

MAY 23, 1899

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His Excellency Mr. Staal presiding.

The meeting opens at noon.

The minutes of the second meeting are adopted.

The **President** invites Mr. VAN KARNEBEEK to submit to the Conference a plan for the organization of the commissions and the distribution of the work.

Jonkheer van Karnebeek reads the following proposals:

The bureau of each commission will contain honorary presidents, a president, an assistant president and several vice presidents.

The presidents and assistant presidents will divide between themselves the presidency of the subcommissions.

In virtue of these provisions, Jonkheer van Karnebeek proposes to constitute the bureaus in the following manner:

### FIRST COMMISSION

His Excellency Count MÜNSTER,	}	Honorary presidents.
His Excellency Mr. WHITE.		
His Excellency Mr. BEERNAERT,		President.
Mr. VAN KARNEBEEK,		Assistant president.
ABDULLAH PASHA,	}	Vice presidents of the first subcommission.
Sir JOHN ARDAGH,		
General MOUNIER,		
Sir JOHN FISHER,	}	Vice presidents of the second subcommission.
Admiral PÉPHAU,		
Captain SIEGEL.		

### SECOND COMMISSION

His Excellency Duque DE TETUÁN,	}	Honorary presidents.
His Excellency TURKHAN PASHA,		
His Excellency Count WELSERSHEIMB,		
Mr. MARTENS,		President.
Mr. ASSER,		Assistant president.
Mr. ROTH,	}	Vice presidents of the first subcommission.
General THAULOW,		
Baron VON STENGEL,	}	Vice presidents of the second subcommission.
General ZUCCARI.		

## THIRD COMMISSION

His Excellency Count NIGRA,	}	Honorary presidents.
His Excellency Sir JULIAN PAUNCEFOTE,		
Mr. LÉON BOURGEOIS,	}	President.
Mr. BILLE,		
Baron d'ESTOURNELLES DE CONSTANT,	}	Vice presidents.
COUNT DE MACEDO,		
Mr. MÉREY VON KAPOŠ-MÉRE,		
Mr. POMPIJ,		
Dr. ZORN.		

These proposals are adopted.

Jonkheer van **Karnebeek** suggests to the Conference the adoption of the following schedule for the work of the Commissions:

[16]	Monday	10 o'clock	First Commission.
	Monday	2 o'clock	Third Commission.
	Tuesday	10 o'clock	Second Commission.
	Wednesday	10 o'clock	First Commission.
	Wednesday	2 o'clock	Third Commission.
	Thursday	10 o'clock	Second Commission.
	Friday	10 o'clock	First Commission.
	Friday	2 o'clock	Third Commission.
	Saturday	10 o'clock	Second Commission.

For the current week, the Second Commission will meet next Thursday at 10 o'clock, the First, Friday at 10 o'clock in the morning, the Third, Friday at 2 o'clock and the Second, Saturday at 10 o'clock.

Mr. **Raffalovich** desires to know the intentions of the Conference concerning the minutes of the meetings of the Commissions. He suggests the adoption of the system of analytical notes to be taken by the secretaries and read at the next meeting. These notes are useful when it is necessary to present a report on the work of the Commissions in a plenary meeting. They should not be printed, but placed at the disposal of the members who should wish to consult them.

Their reading at the beginning of the meeting would permit the verification of the minutes of the preceding meeting. The motions or proposals formulated in the Commissions should always be copied and distributed to the members.

After an exchange of opinion on this subject between Baron **Bildt** and Mr. **Beldiman**, the Conference, at the suggestion of Mr. **Martens**, decides that the Commissions themselves will regulate the procedure of the minutes of their meetings.

The **President** informs the Conference that numerous communications have been received by the Bureau, and he proposes to hand them over for inspection by a special Commission presided over by Mr. **VAN KARNEBEEK**. (*Adopted.*)

The **PRESIDENT** states to the Conference that the table of the distribution of the members of the different Commissions will be printed and annexed to the minutes of the next meeting.

The meeting adjourns at 1 o'clock.

## Annex to the Minutes of the Third Meeting, May 23

## FIRST COMMISSION

*Monday, Wednesday and Friday, 10 o'clock*

His Excellency Count MÜNSTER,	}	Honorary presidents.
His Excellency Mr. WHITE,		
His Excellency Mr. BEERNAERT,		President.
Jonkheer VAN KARNEBEEK,		Assistant president.
ABDULLAH PASHA,	}	Vice presidents of the first
General MOUNIER,		subcommission.
Sir JOHN ARDAGH,		
Captain SIEGEL,	}	Vice presidents of the second
Admiral PÉPHAU,		subcommission.
Sir JOHN FISHER.		

## MEMBERS

For Germany: Baron VON STENGEL, Colonel GROSS VON SCHWARZHOFF, Captain SIEGEL.

For the United States of America: His Excellency Mr. WHITE, Captain MAHAN, Captain CROZIER.

For Austria-Hungary: Lieutenant Colonel KHUEPACH ZU REID, ZIMMERLEHEN UND HASLBURG, Captain of Corvette Count SOLTYK.

For Belgium: His Excellency Mr. BEERNAERT, Count DE GRELLE ROGIER.

For China: His Excellency Mr. YANG YÜ.

For Denmark: Mr. BILLE, Colonel VON SCHNACK.

[17] For Spain: Colonel Count DE SERRALLO.

For France: Mr. BIHOUD, General MOUNIER, Admiral PÉPHAU.

For Great Britain: Sir JOHN FISHER, Sir J. ARDAGH, Lieutenant Colonel C. À COURT.

For Greece:

For Italy: General Chevalier ZUCCARI, Captain Chevalier BIANCO.

For Luxemburg:

For Mexico: Mr. ZENIL.

For the Netherlands: General DEN BEER POORTUGAEL, Captain TADEMA.

For Persia: General MIRZA RIZA KHAN, ARFA-UD-DOVLEH.

For Portugal: Captain A. D'ORNELLAS, Captain A. DE CASTILHO.

For Roumania: Mr. BELDIMAN, Colonel COANDA.

For Russia: Mr. BASILY, Colonel GILINSKY, Colonel Count BARANTZEW, Commander SCHEINE, Mr. OVTCHINNIKOW, Naval Lieutenant, Mr. RAFFALOVICH.

For Serbia: Colonel MASCHINE.

For Siam: Mr. CORRAGIONI D'ORELLI, Mr. E. ROLIN.

For Sweden and Norway: Colonel BRÄNDSTRÖM, Commander DE HJULHAMMAR.



For Switzerland: Colonel KÜNZLI.

For Turkey: General ABDULLAH PASHA, Admiral MEHEMED PASHA.

For Bulgaria: Major HESSAPTCHIEFF.

## SECOND COMMISSION

*Tuesday, Thursday and Saturday, 10 o'clock*

His Excellency Duque DE TETUÁN,	}	Honorary presidents.
His Excellency TURKHAN PASHA,		
His Excellency Count WELSERSHEIMB,		
Mr. MARTENS,		President.
Mr. ASSER,		Assistant president.
Mr. ROTH,	}	Vice presidents of the first subcommission.
General THAULOW,		
Baron VON STENGEL,	}	Vice presidents of the second subcommission.
General ZUCCARI.		

## MEMBERS

For Germany: Baron VON STENGEL, Dr. ZORN, Colonel GROSS VON SCHWARZHOFF, Captain SIEGEL.

For the United States of America: His Excellency Mr. WHITE, Mr. STANFORD NEWEL, Captain MAHAN, Captain CROZIER.

For Austria-Hungary: Mr. LAMMASCH, Lieutenant Colonel KHUEPACH ZU REID, ZIMMERLEHEN UND HASLBURG, Captain of Corvette Count SOLTYK.

For Belgium: His Excellency Mr. BEERNAERT, Count DE GRELLE ROGIER, Chevalier DESCAMPS.

For China: His Excellency Mr. YANG YÜ, Mr. HOO WEI-TEH, Mr. LOU TSENG-TSIANG.

For Denmark: Colonel VON SCHNACK, Mr. BILLE.

For Spain: Mr. DE VILLA URRUTIA, Mr. DE BAGUER.

For France: General MOUNIER, Admiral PÉPHAU, Mr. RENAULT.

For Great Britain: Sir JOHN FISHER, Sir J. ARDAGH, Lieutenant Colonel C. A COURT.

For Greece:

For Italy: Count ZANNINI, Mr. POMPILJ, General Chevalier ZUCCARI, Captain Chevalier BIANCO.

For Japan: Mr. MOTONO, Colonel UEHARA, Captain SAKAMOTO, Mr. ARIGA.

For Luxemburg: His Excellency Mr. EYSCHEN, Count DE VILLERS.

For Mexico: Mr. DE MIER, Mr. ZENIL.

For the Netherlands: Mr. ASSER, General DEN BEER POORTUGAEL, Captain TADEMA.

For Persia: General MIRZA RIZA KHAN, ARFA-UD-DOVLEH.

For Portugal: Count DE SELIR, Captain A. DE CASTILHO.

For Roumania: Mr. BELDIMAN, Mr. PAPINIU, Colonel COANDA.

For Russia: Mr. MARTENS, Colonel GILINSKY, Colonel Count BARANTZEW, Commander SCHEINE, Naval Lieutenant OVTCHINNIKOW.

For Serbia: Mr. MIYATOVITCH, Dr. VELJKOVITCH.

For Siam: Mr. CORRAGONI D'ORELLI, Mr. E. ROLIN.

For Sweden and Norway: General THAULOW, Colonel BRÄNDSTRÖM.

For Switzerland: Dr. ROTH, Mr. ODIER.

[18] For Turkey: NOURY BEY, General ABDULLAH PASHA, Admiral MEHEMED PASHA.

For Bulgaria: Dr. STANCIOFF.

### THIRD COMMISSION

*Monday, Wednesday and Friday, 2 o'clock*

His Excellency Count NIGRA,	} Honorary presidents.
His Excellency Sir JULIAN PAUNCEFOTE,	
Mr. LÉON BOURGEOIS,	} President.
Mr. BILLE,	
Baron d'ESTOURNELLES DE CONSTANT,	} Vice presidents.
Count DE MACEDO,	
Mr. MÉREY VON KAPO-S-MÉRE,	
Mr. POMPILJ,	
Dr. ZORN.	

### MEMBERS

For Germany: Dr. ZORN, Colonel GROSS VON SCHWARZHOFF, Captain SIEGEL.

For the United States of America: His Excellency Mr. WHITE, Honorable SETH LOW, Mr. HOLLS.

For Austria-Hungary: His Excellency Count VON WELSERSHEIMB, Mr. OKOLICSÁNYI VON OKOLICSNA, Mr. MÉREY VON KAPO-S-MÉRE.

For Belgium: Count DE GRELLÉ ROGIER, Chevalier DESCAMPS.

For China: His Excellency Mr. YANG YÜ, Mr. HOO WEI-TEH, Mr. LOU TSENG-TSIANG.

For Denmark: Mr. BILLE.

For Spain: His Excellency Duque DE TETUAN, Mr. VILLA URRUTIA.

For France: Mr. BOURGEOIS, Baron d'ESTOURNELLES DE CONSTANT, Mr. RENAULT.

For Great Britain: His Excellency Sir JULIAN PAUNCEFOTE, Sir HENRY HOWARD.

For Greece: Mr. DELYANNI.

For Italy: His Excellency Count NIGRA, Count ZANNINI, Mr. POMPILJ.

For Japan: Baron HAYASHI, Mr. MOTONO, Mr. ARIGA.

For Luxemburg: His Excellency Mr. EYSCHEN, Count DE VILLERS.

For Mexico: Mr. DE MIER, Mr. ZENIL.

For the Netherlands: Jonkheer VAN KARNEBEEK, Mr. ASSER, Mr. RAHUSEN.

For Persia: General MIRZA RIZA KHAN, ARFA-UD-DOVLEH.

For Portugal: Mr. d'ORNELLAS DE VASCONCELLOS.

For Roumania: Mr. BELDIMAN, Mr. PAPINIU.

For Russia: His Excellency Mr. STAAL, Mr. MARTENS, Mr. BASILY, Mr. RAFFALOVICH.

For Serbia : Mr. MIYATOVITCH, Dr. VELJKOVITCH.

For Siam : Mr. PHYA SURIYA, Mr. CORRAGONI D'ORELLI, Mr. ROLIN.

For Sweden and Norway : Baron BILDT, Mr. KONOW.

For Switzerland : Dr. ROTH, Colonel KÜNZLI, Mr. ODIER.

For Turkey : His Excellency TURKHAN PASHA, NOURY BEY.

For Bulgaria : Dr. STANCIOFF.

## FOURTH MEETING

JUNE 20, 1899

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Mr. **Staal** presiding.

The meeting opens at 4 o'clock.

The minutes of the meeting of May 23 are adopted.

The **President** states that the first business on the agenda is the examination of the report of the Second Commission upon a series of provisions having [19] for object an adaptation to maritime warfare of the principles of the Geneva Convention, and the vote on the articles proposed to the Conference by the Commission.

Count **de Macedo** declares that he does not wish to go so far as to ask the postponement of the first part of the business on the agenda, but he remarks that the vote on the ten articles presented cannot be final inasmuch as they have been referred by the Second Commission to the subcommission.

Mr. **Martens** states that the Commission has finally adopted the ten articles submitted to it. What has been referred to the committee of examination of the first subcommission are the additional proposals presented by Captain **MAHAN**.

Count **de Macedo** replies that in his opinion, it might happen that the resolutions taken would again modify the text of the articles adopted and that, in this case, the Conference would have to recommence its examination.

He adds that, whatever may be the decision reached, he believes it incumbent upon him to renew the declaration he has made in the meeting of the Second Commission, which is couched in these terms:

Count **DE MACEDO**, first delegate of Portugal, declares, requesting the Second Commission to record this declaration and consider it as a general reservation to the ten articles just read and discussed, that the instructions of his Government being naturally limited to the question of adhesion to the general principles contained in the **MOURAVIEFF** circular and to the acceptance under an equally general form of the application of these principles, his favorable, though silent, vote on the doctrine of the aforesaid articles has no final character even within the limits that his powers permit him to vote (that is *ad referendum*); and that this character cannot be obtained until he receives, from the Government of His Most Faithful Majesty, instructions given with a full knowledge of the text just voted upon.

The **President** records the declaration of the Count **DE MACEDO**.

The **PRESIDENT**: I am certainly assured of unanimous adhesion in congratulating the Second Commission on having been the first to bring us a tangible result of common good-will. As Mr. **RENAULT** so well expresses it in his remarkable report, we have before us "a project which will reconcile the interests

involved, and will satisfy the hope, expressed for so long a time, that maritime warfare should no longer be deprived of the humanitarian and charitable element which the Geneva Convention has added to war on land." I must ask you to address our thanks especially to Mr. ASSER who has so competently presided over the deliberations of the subcommission. Mr. RENAULT, who has been kind enough to take charge of the report and who has also given us the lasting and systematic commentary on the text, is entitled to our full gratitude.

Mr. ASSER considers that it will suffice to read the text of the articles voted in the Commission in order that the Conference be enabled to reach a decision regarding them. Referring to the observation made by the Count DE MACEDO, Mr. ASSER explains that, although the Commission voted that the three additional articles presented by Captain MAHAN be referred to the drafting committee, it intended to maintain in full the text of the ten articles submitted to the approval of the Conference. It is possible, though not probable, that this reference will involve certain modifications in the text of these articles.

In this case the new text would be submitted to the Conference in a subsequent meeting. But it would be regrettable if the plenary assembly were to separate to-day without ratifying the proposals of the Second Commission.

Mr. ASSER then reads the ten articles as the Second Commission has adopted them :

#### ARTICLE 1

Military hospital ships, that is to say, ships constructed or assigned by States specially and solely with a view to assist the wounded, sick and shipwrecked, the names of which have been communicated to the belligerent Powers at the commencement or during the course of hostilities, and in any case before they are employed, shall be respected and cannot be captured while hostilities last.

These ships, moreover, are not on the same footing as men-of-war as regards their stay in a neutral port.

#### ARTICLE 2

Hospital ships, equipped wholly or in part at the expense of private individuals or officially recognized relief societies, shall likewise be respected and exempt from capture, if the belligerent Power to which they belong has given them an official commission and has notified their names to the hostile Power at the commencement of or during hostilities, and in any case before they are employed.

These ships shall be provided with a certificate from the competent authorities, declaring that they had been under their control while fitting out and on final departure.

#### ARTICLE 3

Hospital ships, equipped wholly or in part at the expense of private individuals or officially recognized societies of neutral countries, shall be respected and exempt [20] from capture, if the neutral Power to which they belong has given them an official commission and has notified their names to the belligerent Powers at the commencement of or during hostilities, and in any case before they are employed.

#### ARTICLE 4

The ships mentioned in Articles 1, 2, and 3 shall afford relief and assistance to the wounded, sick and shipwrecked of the belligerents without distinction of nationality.

The Governments undertake not to use these ships for any military purpose.

These ships must in nowise hamper the movements of the combatants.

During and after an engagement they will act at their own risk and peril.

The belligerents will have the right to control and search them; they can refuse to help them, order them off, make them take a certain course, and put a commissioner on board; they can even detain them, if important circumstances require it.

As far as possible the belligerents shall enter in the log of the hospital ships the orders which they give them.

#### ARTICLE 5

Military hospital ships shall be distinguished by being painted white outside with a horizontal band of green about a metre and a half in breadth.

The ships mentioned in Articles 2 and 3 shall be distinguished by being painted white outside with a horizontal band of red about a metre and a half in breadth.

The boats of the ships above-mentioned, as also small craft which may be used for hospital work, shall be distinguished by similar painting.

All hospital ships shall make themselves known by hoisting, with their national flag, the white flag with a red cross provided by the Geneva Convention.

#### ARTICLE 6

Neutral merchantmen, yachts, or vessels, having, or taking on board, sick, wounded, or shipwrecked of the belligerents, cannot be captured for so doing, but they are liable to capture for any violation of neutrality they may have committed.

#### ARTICLE 7

The religious, medical, and hospital staff of any captured ship is inviolable, and its members cannot be made prisoners of war. On leaving the ship they take with them the objects and surgical instruments which are their own private property.

This staff shall continue to discharge its duties while necessary, and can afterwards leave when the commander in chief considers it possible.

The belligerents must guarantee to the said staff when it has fallen into their hands the enjoyment of their salaries intact.

#### ARTICLE 8

Sailors and soldiers on board when sick or wounded, to whatever nation they belong, shall be protected and tended by the captors.

#### ARTICLE 9

The shipwrecked, wounded or sick of one of the belligerents who fall into the power of the other, are prisoners of war. The captor must decide, according to circumstances, whether to keep them, send them to a port of his own country, to a neutral port, or even to the enemy port. In this last case, prisoners thus repatriated cannot serve again while the war lasts.

#### ARTICLE 10

The shipwrecked, wounded, or sick, who are landed at a neutral port, with the consent of the local authorities, must, unless an arrangement is made to the contrary between the neutral State and the belligerent States, be guarded by the neutral State so as to prevent their again taking part in the operations of the war.

The expenses of tending them in hospital and internment shall be borne by the State to which the shipwrecked, sick or wounded belong.

Count de Grelle Rogier asks if it would not be preferable to say in Article 10, paragraph 2: "the expenses of tending them in hospital and, *the case arising*, of internment shall be borne, etc., etc."

Mr. **Renault**, reporter, opposes this amendment and requests the Conference to maintain Article 10.

The **President** consults the Conference on the adoption of the ten articles proposed.

These articles are adopted.

The delegate of Japan, Mr. **Motono**, makes the following declaration:

In the meeting of May 30, 1899, of the first subcommission of the Second Commission, I had the honor, in the name of the delegation of Japan, to call the attention of the subcommission to a deficiency which seemed to us to exist both in the provisions of the Geneva Convention of 1864 and in the additional articles of 1868.

The wounded and the sick of the army on land as well as the hospitals, ambulances and evacuations are protected by the Geneva Convention.

[21] The additional articles of 1868 had in view the protection in a certain measure of the hospital ships, their staff, and also the wounded, sick and shipwrecked aboard these ships; but the general purport of these provisions would seem to apply only to the victims of maritime warfare.

The Imperial Government of Japan considers it necessary, in the interest of humanity, to extend to hospital ships, charged with the transport by sea of the wounded and sick of the army on land, the protection accorded by the Geneva Convention to military hospitals, ambulances and evacuations.

It is with this end in view that I have had the honor, in accordance with the instructions of our Government, of expressing, in the meeting of May 30 of the first subcommission of the Second Commission, the desire to see an adequate provision inserted in the present project.

The first subcommission of the Second Commission decided in the same meeting to take our desire into account, and Mr. **RENAULT** in his remarkable report presented to you on the work of the Second Commission, has inserted the general purport of the innovation introduced into the present project in these terms:

In the provisions submitted to the Conference by the Commission, we have spoken of wounded, sick, and shipwrecked, not of victims of maritime warfare. The latter expression, although generally accurate, would not always be so, and therefore should not appear. The rules set forth are to be applied from the moment that there are wounded and sick on board sea-going vessels, it being immaterial where the wound was given or the sickness contracted, whether on land or at sea. Consequently, if a vessel's duty is to carry by sea the wounded or sick of land forces, this vessel and these sick and wounded come under the provisions of our project. On the other hand, it is clear that if sick or wounded soldiers are disembarked and placed in an ambulance or a hospital, the Geneva Convention then applies to them in all respects.

As this observation seems to us to respond fully to the remarks made in the subcommission on this point, we think it unnecessary to insert any provision dealing especially with it.

These observations in the report of the Second Commission give full satisfaction to the desire expressed by the Imperial Government of Japan.

In consequence, and to avoid all misunderstanding in the future as to the interpretation of the two texts of the present project relating to the above-

mentioned point, I have the honor to ask you, in the name of the delegation of Japan, that the above-cited passage of the report be inserted in the protocol of the Peace Conference.

The **President** records the declaration of Mr. MORONO and states that its examination will be referred to the committee charged with the drafting of the Final Act.

Mr. **Delyanni** makes the following declaration:

I have to-day taken part in the examination of the report and the articles concerning the adaptation of the principles of the Geneva Convention to maritime warfare, but I cannot sign the general act of the Conference which is to be drawn up, before submitting the text to my Government and receiving authorization to sign it.

The **Ottoman delegation** makes the following declaration:

The Ottoman delegates declare that they cannot affix their signatures to the general act of the Conference, implying approval of the articles voted upon relating to the adaptation of the principles of the Geneva Convention to maritime warfare, before submitting it to their Government, and receiving instructions therefrom.

The **President** records these declarations.

The **PRESIDENT** states that the second part of the business on the agenda is the appointment of the committee charged with giving the conventional form to the decisions of the Conference, that is to say, drawing up the necessary documents in accordance with the established formulas. He proposes to constitute the committee of his Excellency Count NIGRA, Messrs. ASSER, DESCÂMPs, MARTENS, RENAULT, Baron VON STENGEL, and adds Mr. RAFFALOVICH to represent therein the secretariat general.

This selection is ratified by the Conference.

The meeting closes at 4:30 o'clock.

## [22] Annex to the Minutes, Fourth Meeting, June 20

### REPORT TO THE CONFERENCE<sup>1</sup>

The Second Commission has adopted, on the report of a drafting committee,<sup>2</sup> a series of provisions having for its aim the adaptation of the principles of the Convention of Geneva to maritime warfare. It now submits these provisions to

<sup>1</sup> [The Articles (1-10) quoted in this report were approved by the Conference without change. Pt. i, *ante*, p. 28. Several variations in their wording in the report are seen, by a reference to the proceedings of the Second Commission and the first subcommission thereof (pt. iii, *post*, pp. 387-90, 459 *et seq.*), to be typographical or clerical errors; and the proper corrections therein have been presumed in this translation.]

<sup>2</sup> This committee consisted of Vice Admiral FISHER, Captain SCHEINE, Captain SIEGEL, and Professor RENAULT as reporter. Lieutenant Colonel CHARLES À COURT and Lieutenant OVTCHINNIKOW also participated in the work of this committee as associate members.



the vote of the Conference and accompanies them with this report, which is designed to explain the reasons for the articles proposed.

To the Second Commission (first subcommission) was assigned the duty of examining points 5 and 6 of Count MOURAVIEFF's circular. It has been assumed that it is desirable to adapt the principles of the Geneva Convention of 1864 to maritime wars, and also that it is proper to take the additional articles of 1868 as a basis. The latter articles gave rise to criticism very soon after their signature, and have been for thirty years the subject of a great deal of study. It now becomes necessary to take those criticisms into account, to profit by the discussions, and to decide on some project which will reconcile the interests involved and will also satisfy the hope that has been expressed for so long a time by individuals and societies of the highest eminence that maritime warfare should no longer be deprived of the humanitarian and charitable element which the Geneva Convention has added to war on land. We think that the preparatory work on this project, so earnestly desired by public opinion, is now sufficiently done and that it is now time to obtain results. We hope that our work will permit the Conference to do this and, with a complete knowledge of the matter, to take action by adopting a text which may be easily transformed into an international convention.

We have been guided by the following general ideas. In the first place, we confined ourselves to general principles only, and did not enter into details of organization and regulation which are for each State to settle according to its own interests or customs. We determine what the legal status of hospital ships should be in international law; but we do not determine what shall constitute such ships, nor do we distinguish Government vessels from vessels of relief societies, nor do we say whether boats belonging to private individuals may be attached to the hospital service during a war. These are questions that must be handled by the several Governments, because circumstances are so different that a uniform solution cannot be applied. The assistance rendered by private charity will be greater or less, according to the country. Then again, we must not be so preoccupied with the demands of humanity that we are oblivious of the necessities of warfare; we must avoid laying down rules which, even though inspired by sentiments of humanity, are likely to be disregarded often by the combatants as unduly impeding their freedom of action. Humanity gains little by the adoption of a rule that remains a dead letter; and the feeling of respect for engagements is but weakened. It is accordingly indispensable to impose only such obligations as can be fulfilled in all circumstances and to leave to the combatants all the latitude they require. This, it is to be hoped, will not be so used as needlessly to hinder relief work.

The provisions to be decided on fall into three classes: we have to make rules regarding the status, first, of the vessels engaged in relief work (Articles 1 to 6); secondly, of the persons so engaged (Article 7); and thirdly, of the wounded, sick or shipwrecked (Articles 8 and 9).

## VESSELS

There may be, as a matter of fact, vessels of very different kinds engaged in either permanent or casual hospital service.

### MILITARY HOSPITAL SHIPS

At the Geneva Conference of 1868, a variety of opinions existed as to the status that such ships should be given. After allowing them the benefit of neu-

trality under certain conditions, the ninth additional article was finally adopted, as follows:

The military hospital ships remain under martial law in all that concerns their stores; they become the property of the captor, but the latter must not divert them from their special appropriation during the continuance of the war.

In 1869 the French Government asked that the following provision be added to Article 9:

The vessels not equipped for fighting, which, during peace, the Government shall have officially declared to be intended to serve as floating hospital ships, shall, however, enjoy during the war complete neutrality, both as regards stores, and also as regards their staff, provided their equipment is exclusively appropriated to the special service on which they are employed.

That the British Government supported this view may be seen in the note addressed to Prince DE LA TOUR D'AUVERGNE by Count CLARENDON, January 21, 1869.

The Commission has expressed itself as in favor of the plan proposed in 1869, although it is of the opinion that a single general rule can be formulated to take the place of Article 9 with the additional provision just quoted. It has seemed indispensable to remove the ships under consideration from exposure to the vicissitudes of warfare, and at the same time to take precaution against the commission of abuses.

The Commission accordingly proposes to exempt from capture ships *constructed or assigned by States specially and solely with a view to assist the wounded, sick and shipwrecked*. Each State will construct or assign as it sees fit the ships intended for hospital service; no particular type of vessel should be required of it. The essential point is that the ships shall have no other character than that of hospital ships, and consequently cannot carry anything that is not intended for the sick or wounded and those caring for them, and that might be used for acts of hostility.

As each belligerent ought to know what ships of his adversary are accorded particular immunities, the names of these must be communicated officially. When should this communication be made? Naturally at the very beginning of hostilities. But it would be too stringent a rule to accept only notifications made at that time. A belligerent may have been taken unawares by war and not have hospital ships already constructed or assigned; or the war might take on such great proportions that the existing hospital ships would be deemed insufficient. Would it not be cruel to refuse belligerents the privilege of augmenting their hospital service to meet the needs of the war, and consequently of fitting up new ships? This is admitted. Notification may then be made even during the course of hostilities, but it is to precede the employment of the ship in its new service.

This notification of the names of military hospital ships interests primarily the belligerents; it may also be of interest to neutrals since, as will be explained, a special status is enjoyed by such ships in neutral ports. It is accordingly desirable that the belligerents acquaint neutral States with the names of these vessels, even if only by publication in their official journals.

The assignment of a vessel to hospital service cannot of course, after such

notification to the adversary, be changed while the war lasts. Otherwise, abuses would be possible; as, for instance, a hospital ship might thus be enabled to reach a given destination and then might be transformed into a vessel designated to take part in hostilities.

In defining the immunity granted military hospital ships, we have avoided the words " neutrals " and " neutrality," which are in themselves inexact and have long given rise to just criticism, as was seen in the subcommission. We propose saying simply that these vessels " shall be respected and cannot be captured." In this way we state concretely and precisely the two principal consequences understood to flow from the abstract idea of neutrality. These ships must not be attacked. Their character as hospital ships is to protect them from being made the object of measures employed against ships of war, just as ambulances and military hospitals are respected by belligerents under Article 1 of the Convention of 1864. The respect thus assured hospital ships does not preclude, as we shall show later in speaking of Article 4, such precautionary measures as may be necessary.

Again, military hospital ships are not to be subjected to the law of prize that naturally applies to all ships of the enemy. Here we have in the higher interests of humanity common to the belligerents a renunciation of an incontestable right.

What has been said has to do only with the relations between belligerents. In such relations a special status is created for military hospital ships, and they are not treated as hostile ships of war. But it has seemed necessary to extend the same principle to the relations between these vessels and neutral ports, for otherwise the authorities of those parts might class the hospital ships [24] with the naval vessels of the belligerent to which they belong, and so place their stay, revictualing, and departure under the same strict rules as are imposed upon men-of-war. This would not be reasonable. We must have a precise rule both to avoid any difficulty between hospital ships and neutral port authorities as well as any complaint on the part of belligerents. Apart from this, these military hospital ships will naturally be treated like men-of-war, notably with respect to the advantage of exterritoriality. The status of military hospital ships might therefore be regulated as follows:

#### ARTICLE 1

Military hospital ships, that is to say, ships constructed or assigned by States specially and solely with a view to assist the wounded, sick and shipwrecked, the names of which have been communicated to the belligerent Powers at the commencement or during the course of hostilities, and in any case before they are employed, shall be respected and cannot be captured while hostilities last.

These ships, moreover, are not on the same footing as men-of-war as regards their stay in a neutral port.

#### HOSPITAL SHIPS OF BELLIGERENTS, OTHER THAN GOVERNMENT VESSELS

The thirteenth additional article of 1868 deals with hospital ships that are equipped at the expense of relief societies. We preserve the provision as regards them with a few modifications. The societies meant are those officially recognized by each belligerent; the expression used in Article 13 is too vague and at the same time ambiguous. The word " neutral," used therein to define the status of

these vessels, is avoided for the reasons given in connection with the preceding article.

Finally, the same notification from belligerent to belligerent is prescribed as for military hospital ships, and for the same reason.

The provision of Article 13 has been supplemented in a useful way by granting to boats which individuals may wish to devote to the hospital service the same immunity from the moment they present the same guaranties. This may be a valuable resource, for in several countries owners of pleasure yachts have expressed their intention of devoting them to the hospital service in time of war.

#### ARTICLE 2

Hospital ships, equipped wholly or in part at the expense of private individuals or officially recognized relief societies, shall likewise be respected and exempt from capture, if the belligerent Power to which they belong has given them an official commission and has notified their names to the hostile Power at the commencement of or during hostilities, and in any case before they are employed.

These ships shall be provided with a certificate from the competent authorities, declaring that they had been under their control while fitting out and on final departure.

#### NEUTRAL HOSPITAL SHIPS

The future will tell whether neutral relief work will take place in naval wars and if so to what extent. We confine ourselves to saying that it is proper under conditions that appear to carry satisfactory guaranties. Such relief vessels must be granted upon knowledge of the exclusively hospital character of the vessels, be furnished by their Government with an official commission which shall only and their names must be made known to the belligerent Powers.

There was some thought of requiring neutral hospital ships to place themselves under the direct authority of one or other of the belligerents, but careful study has convinced us that this would lead to serious difficulties. What flag would these ships fly? Would it not be somewhat inconsistent with the concept of neutrality for a ship with an official commission to be incorporated in the navy of one of the belligerents? It seemed to us sufficient to have these vessels, which are primarily under the control of the Government from which they have received their commissions, subjected to the authority of the belligerents to the extent provided in Article 4 below.

#### ARTICLE 3

Hospital ships, equipped wholly or in part at the expense of private individuals or officially recognized societies of neutral countries, shall be respected and exempt from capture, if the neutral Power to which they belong has given them an official commission and has notified their names to the belligerent Powers at the commencement of or during hostilities, and in any case before they are employed.

#### RULES COMMON TO HOSPITAL SHIPS

The immunity granted to the ships just spoken of is not based on their own interests but on the interests of the victims of war to whom they purpose carrying relief; and these interests, however worthy of respect, must not cause us to lose

sight of the purpose of warfare. This twofold idea explains two series of provisions.

In the first place the humanitarian purpose must not be entirely selfish.

The ships in question should offer their assistance to the victims of war [25] without distinction as to nationality. This does not apply alone to neutral ships which, for example, give charitable aid to both parties; it applies with equal force to the vessels of the belligerents. In this way the immunity which is granted them finds its justification. Each belligerent yields up the right of capturing vessels of this description belonging to its adversary, and this renunciation is prompted both by a charitable motive and by a well-understood self-interest, since when an opportunity arises these vessels will render service to their own sailors as well as to those of the enemy.

It must be perfectly understood that these vessels are not to serve any other purpose, that they cannot under any pretext be directly or indirectly employed to further any military operation: as gathering information, carrying dispatches, or transporting troops, arms, or munitions. The contracting Governments in signing the proposed convention engage their honor in this sense. It would be perfidy to disregard it.

While holding scrupulously to their charitable rôle, hospital ships must in no way hamper the movements of the belligerents. The latter can demand, accept, or refuse their help. They may order them to move off and in so doing they may determine in what direction they shall go. In the latter case it may sometimes seem necessary to put a commissioner on board to ensure complete execution of the orders given. Finally, in particularly serious circumstances the rights of the belligerents may go to the length of detaining hospital ships; as for instance when necessary to preserve absolute secrecy of operations.

In order to obviate disputes respecting the existence or the meaning of an order it is desirable that the belligerents should record the order on the log of the hospital ship. This, however, may not always be possible; the condition of the sea or extreme urgency may preclude this formality; and so its performance ought not to be absolutely requisite. The hospital ship would not be permitted to invoke the absence of such a record from its log in order to justify it in disregarding the orders received, if these orders could be proved in another way.

It has sometimes been proposed to fix upon special signals for ships asking for relief and for hospital ships offering it. The Commission believes that no special provision is necessary on this point, that the "international signal code" as adopted by all navies is sufficient for the end in view.

Finally, it goes without saying that the belligerents should have the right to control and search all hospital ships without exception. They must be able to convince themselves that no abuse is committed and that these ships are in no way diverted from their charitable commission. The right of search is here the necessary counterpart of their immunity and it should not be surprising to see it applied even to Government vessels. These vessels would be searched and captured if left under the *régime* of the common law; search therefore does not injure their situation; it is merely a condition of the more favorable status granted them.

It is proper to observe that searching hospital ships is important not only to see that these vessels do not depart from their rôle, but also to ascertain the condition of the wounded, sick, or shipwrecked who may be on board, as will be hereafter explained in connection with Article 9.

The provisions here reproduced are almost textually borrowed from paragraphs 4, 5, 6, and 7 of the thirteenth additional article; we have merely extended them to all hospital ships without distinction inasmuch as we grant immunities to all ships.

#### ARTICLE 4

The ships mentioned in Articles 1, 2, and 3 shall afford relief and assistance to the wounded, sick, and shipwrecked of the belligerents without distinction of nationality.

The Governments undertake not to use these ships for any military purpose.

These ships must in nowise hamper the movements of the combatants.

During and after an engagement they will act at their own risk and peril.

The belligerents will have the right to control and search them; they can refuse to help them, order them off, make them take a certain course, and put a commissioner on board; they can even detain them, if important circumstances require it.

As far as possible the belligerents shall enter in the log of the hospital ships the orders which they give them.

#### DISTINCTIVE SIGNS OF HOSPITAL SHIPS

Hospital ships ought to make their character known in an unmistakable manner; they have the greatest interest in so doing. We have taken the provisions of paragraph 3 of the 12th additional article and paragraph 3 of Article 13, slightly modifying the wording which is no longer suitable for vessels of the present day.

[26] All vessels devoted exclusively to hospital service are to have a band of green or red of the breadth indicated. As this might be impossible for their boats as well as for yachts or small craft which may be used for hospital work, these shall be similarly banded in such proportions as their dimensions permit.

These vessels shall make themselves known by hoisting their own flag together with the white flag with the red cross provided by the Geneva Convention. The rule which is laid down for us by that Convention applies to all hospital ships whether enemy or neutral. The difficulty raised in the case of the latter is done away, as is explained above in connection with Article 3.

#### ARTICLE 5

Military hospital ships shall be distinguished by being painted white outside with a horizontal band of green about a metre and a half in breadth.

The ships mentioned in Articles 2 and 3 shall be distinguished by being painted white outside with a horizontal band of red about a metre and a half in breadth.

The boats of the ships above-mentioned, as also small craft which may be used for hospital work, shall be distinguished by similar painting.

All hospital ships shall make themselves known by hoisting, with their national flag, the white flag with a red cross provided by the Geneva Convention.

#### NEUTRAL MERCHANT VESSELS

We have to do here with neutral vessels that happen for the time being to be transporting shipwrecked, wounded, or sick, whether they have been specially chartered to do so or have chanced to be in a position to receive these victims of warfare. Strictly under the law, such vessels carrying the wounded, sick, or

shipwrecked of one belligerent could, on meeting a war-ship of the other belligerent, be considered fair prize for helping the Power whose nationals they were carrying. But every one is agreed that this harsh consequence should be prevented, and that these vessels should not suffer punishment for their charitable aid, but should be left their freedom. Here we see emphasized the advantage of avoiding the term "neutrality" in describing the immunity from capture granted to certain ships; for otherwise we should have to use a very strange form of speech in declaring that the "neutral" ships of which we are speaking are "neutralized."

On the other hand, these vessels cannot rely on the charitable cooperation they extend to escape the consequences of unneutral service. Such a case would be presented if they carried contraband of war, or if they violated a blockade. They would be liable to the usual consequence of such acts.

In brief, a neutral ship does not alter its status as a neutral one way or another by carrying wounded, sick, or shipwrecked. Probably this is what was meant by the second paragraph of additional Article 10, but the phraseology employed was not clear, and, as we know, the British Government sought an explanation. The provision which we now submit is in harmony with juridical principles and with the interpretation agreed upon between the British and French Governments in 1869.<sup>1</sup>

#### ARTICLE 6

Neutral merchantmen, yachts, or vessels, having, or taking on board, sick, wounded, or shipwrecked of the belligerents, cannot be captured for so doing, but they are liable to capture for any violation of neutrality they may have committed.

It will be noticed that we are not proposing any article covering the case where a merchant vessel of one of the belligerents is carrying sick or wounded. In the absence of such a provision the common law prevails and the vessel is, consequently, exposed to capture. This seems logical and correct in principle. Paragraph one of the tenth additional article allows the ship, if charged *exclusively* with removal of sick and wounded, to be "protected by neutrality"; it would not be so where there were passengers and goods besides the sick or wounded. We have not deemed this a proper distinction.

Similarly, the Commission does not propose for adoption any text corresponding to the 6th additional article, as the case provided for therein seemed included in those already dealt with and accordingly to require no special mention. That article deals with boats which at their own risk and peril, during and after an engagement, pick up the shipwrecked or wounded, or which having picked them up, convey them on board a neutral or hospital ship. If these boats belong to the neutral or hospital ship, they have the same character as their ship; they cannot be captured under the rules already laid down. If, on the other [27] hand, they belong to a war-ship or merchantman of one of the belligerents, they may be captured by the other belligerent. No special circumstance appears to exist in their case to remove them from the application of the principles already stated, which appear to us to cover all probable cases. We have thus dealt with the sixth point of Count MOURAVIEFF's circular.

<sup>1</sup> Letter of the Earl of CLARENDON of January 21, 1869, and reply of Prince DE LA TOUR D'AUVERGNE of the following February 26.

## THE MEDICAL PERSONNEL

There is no need, theoretically, to concern ourselves with the medical personnel on board a hospital ship; as the ship itself is respected, the personnel it carries will not be disturbed in the discharge of duty. But the case will be different with a war vessel that falls into the power of the enemy and has on board a medical staff; we may also imagine an enemy merchantman carrying sick and wounded with physicians and nurses to care for them. It would be well to decide, by analogy with land warfare, that whenever a ship is captured, the medical personnel thereon shall be *inviolable*, or in other words, shall not be made prisoners of war. The terms "neutral" and "neutrality" should be eschewed in speaking of persons as well as of ships.

The personnel should continue to perform their functions so far as necessary. Possibly the victor may not have at his disposal a sufficient number of physicians and nurses to take care of the sick who have fallen into his power.

It is well to lay down the principle that the medical personnel in the hands of the enemy are not prisoners of war, but not to say just when they will have the right to leave. This point must be left to the discretion of the commander in chief, as circumstances vary and do not well lend themselves to precise regulation. The commander, of course, must be imbued with the knowledge that he has no right to detain them arbitrarily, since they are not prisoners of war.

Lastly, we must ensure that this personnel be paid for the time during which they are detained with the enemy.

We may have some hesitation as to the amount of this pay. Shall it be what the physicians who are detained had in their own army, or what physicians of the same grade in the enemy's army receive? The stricter view is that it should be only the lower figure. It has, however, seemed simpler and fairer to allow the physicians the enjoyment of their salaries intact, without entering into details about salaries prevailing with the belligerent in whose hands the physicians are.

The text proposed below is taken from the seventh and eighth additional articles, which have been changed in but a few points.

### ARTICLE 7

The religious, medical, and hospital staff of any captured ship is inviolable, and its members cannot be made prisoners of war. On leaving the ship they take with them the objects and surgical instruments which are their own private property.

This staff shall continue to discharge its duties while necessary, and can afterwards leave when the commander in chief considers it possible.

The belligerents must guarantee to the said staff when it has fallen into their hands the enjoyment of their salaries intact.

## WOUNDED, SICK, OR SHIPWRECKED

The general fundamental principle of the Geneva Convention, which is that there exists an obligation to give succor to the victims of military operations, is one that should be applied alike to war on land and war on sea. This idea has been given application in connection with hospital ships (see Article 4, paragraph 1). It also finds expression in the first paragraph of Additional Article 11 (our Article 8).



## ARTICLE 8

**Sailors and soldiers on board when sick or wounded, to whatever nation they belong, shall be protected and tended by the captors.**

In the provisions submitted to the Conference by the Commission, we have spoken of wounded, sick, and shipwrecked, not of victims of maritime warfare. The latter expression, although generally accurate, would not always be so, and therefore should not appear. The rules set forth are to be applied from the moment that there are wounded and sick on board sea-going vessels, it being immaterial where the wound was given or the sickness contracted, whether on land or at sea. Consequently, if a vessel's duty is to carry by sea the wounded or sick of land forces, this vessel and these sick and wounded come under the provisions of our project. On the other hand, it is clear that if sick or wounded sailors are disembarked and placed in an ambulance or a hospital, the [28] Geneva Convention then applies to them in all respects.

As this observation seems to us to respond fully to the remarks made in the subcommission on this point, we think it unnecessary to insert any provision dealing especially with it.

The status to be given the wounded, sick, and shipwrecked has given rise to considerable controversy and even to the somewhat confused rules of the additional articles. See Article 6, paragraph 3; Article 10, paragraph 1; Article 11, paragraph 2; and Article 13, paragraph 8. It seemed to the Commission that the difficulty arose mainly out of the fact that the very simple general principle to be applied to the different cases had been lost sight of. This principle is as follows: a belligerent has in his power hostile combatants, and these combatants are his prisoners. It matters little that they are wounded, sick, or shipwrecked, or that they have been taken on board a vessel of any particular kind. These circumstances do not affect their legal status. This is the governing principle, and its application is not always consistent with the articles of 1868. A belligerent's hospital ship takes on board the sick, wounded, or shipwrecked of its own nationality and carries them to a port of its own country; why should not these be as unrestrained as those who are picked up by an ambulance? The last paragraph of the 13th additional article says, however, that the wounded and shipwrecked taken on board hospital ships cannot serve again during the war.

If we suppose that the same hospital ship, with sick, wounded, or shipwrecked of its own nationality on board, meets a cruiser of the enemy, why would not the latter be justified in considering as prisoners of war the combatants thus coming into its power? There are some among the combatants, such as the sick and wounded, who have a right to special treatment, and towards whom the captor has certain duties; they are none the less all prisoners of war. The additional articles admit this to the extent of making such combatants incapable of further service in the war (Article 10, paragraph 1, and Article 13, towards the end). But this provision does not offer a sufficient guaranty.

The cruiser therefore remains free to act according to circumstances; it may keep the prisoners, or send them to a port of its own country, or to a neutral port, or, in case of need, when there is no other port near, to one of the enemy's ports. It will also take the last-mentioned course when there are only sick or

wounded whose condition is serious. It will not be interested in burdening itself or its own country with the sick and wounded of the enemy. It will therefore generally be the case that hospital ships or others having sick and wounded will not be diverted from their destination. Both humanity and the interest of the belligerent will enjoin this course. But the right of the belligerent cannot be ignored. The wounded or sick who are thus returned to their country cannot serve during the continuance of the war. It is unnecessary to add that if they should be exchanged their status as prisoners of war at liberty on parole would cease, and they would resume their freedom of action.

#### ARTICLE 9

The shipwrecked, wounded, or sick of one of the belligerents who fall into the power of the other, are prisoners of war. The captor must decide, according to circumstances, whether to keep them, send them to a port of his own country, to a neutral port, or even to an enemy port. In this last case, prisoners thus repatriated cannot serve again while the war lasts.

The last provision remaining to be spoken of has no corresponding one in the additional articles. It deals with the case of the shipwrecked, wounded, or sick who are landed in a neutral port. This case must be provided for, both because it will naturally happen quite frequently and may, in the absence of a precise rule, give rise to difficulties. Of course a neutral Government is not bound to receive within its territory the sick, wounded, or shipwrecked. Can it do so even, without failing in the duties of neutrality? The doubt arises from the fact that in certain cases a belligerent will often court danger in getting rid of the sick and wounded who encumber him and hamper him in his operations; the neutral territory will thus help him to execute his hostile enterprise better. Nevertheless, it has seemed that considerations of humanity ought to prevail here. In most cases the disembarkment of the sick and wounded picked up, for instance, by hospital ships or merchantmen would be purely an act of charity, and if this were not done the suffering of the sick and wounded would be needlessly aggravated by prolonging the passage so as to reach a port of their own nation. It may happen too that the wounded and the sick thus landed will belong to both belligerents. The neutral State which has consented to the disembarkment is obliged to take the necessary measures to the end that his territory may serve the victims of the war only as an asylum and that the individuals thus harbored shall not be able to take part in the hostilities again. This is an important [29] point, especially in the case of the shipwrecked.

Lastly, it is clear that the expenses occasioned by the presence of these sick, wounded, or shipwrecked ought not to be borne eventually by the neutral State. They should be refunded by the State to which the individuals belong.

#### ARTICLE 10

The shipwrecked, wounded, or sick, who are landed at a neutral port, with the consent of the local authorities, must, unless an arrangement is made to the contrary between the neutral State and the belligerent States, be guarded by the neutral State so as to prevent their again taking part in the operations of the war.

The expenses of tending them in hospital and internment shall be borne by the State to which the shipwrecked, sick, or wounded belong.

The Commission does not offer any provision corresponding to additional Article 14. It was agreed without debate that this article should be dropped. Doubtless it may unfortunately happen that the rules laid down, if made obligatory, will not always be obeyed, and that more or less serious abuses will be committed. Such regrettable acts will entail the ordinary penalties of the law of nations; they cannot be prevented by a special provision which would be of a nature to weaken the legal and moral force of the preceding rules.

### Text submitted to the Conference

#### ARTICLE 1

Military hospital ships, that is to say, ships constructed or assigned by States especially and solely with a view to assist the wounded, sick and shipwrecked, the names of which have been communicated to the belligerent Powers at the commencement or during the course of hostilities, and in any case before they are employed, shall be respected and cannot be captured while hostilities last.

These ships, moreover, are not on the same footing as men-of-war as regards their stay in a neutral port.

#### ARTICLE 2

Hospital ships, equipped wholly or in part at the expense of private individuals or officially recognized relief societies, shall likewise be respected and exempt from capture, if the belligerent Power to which they belong has given them an official commission and has notified their names to the hostile Power at the commencement of or during hostilities, and in any case before they are employed.

These ships shall be provided with a certificate from the competent authorities, declaring that they had been under their control while fitting out and on final departure.

#### ARTICLE 3

Hospital ships, equipped wholly or in part at the expense of private individuals or officially recognized societies of neutral countries, shall be respected and exempt from capture, if the neutral Power to which they belong has given them an official commission and has notified their names to the belligerent Powers at the commencement of or during hostilities, and in any case before they are employed.

#### ARTICLE 4

The ships mentioned in Articles 1, 2, and 3 shall afford relief and assistance to the wounded, sick and shipwrecked of the belligerents without distinction of nationality.

The Governments undertake not to use these ships for any military purpose. The ships must in nowise hamper the movements of the combatants.

During and after an engagement they will act at their own risk and peril.

The belligerents will have the right to control and search them; they can refuse to help them, order them off, make them take a certain course, and put a commissioner on board; they can even detain them, if important circumstances require it.

As far as possible the belligerents shall enter in the log of the hospital ships the orders which they give them.

#### ARTICLE 5

Military hospital ships shall be distinguished by being painted white outside with a horizontal band of green about a metre and a half in breadth.

The ships mentioned in Articles 2 and 3 shall be distinguished by being painted white outside with a horizontal band of red about a metre and a half in breadth.

The boats of the ships above-mentioned, as also small craft which may be used for hospital work, shall be distinguished by similar painting.

All hospital ships shall make themselves known by hoisting, with their national flag, the white flag with a red cross provided by the Geneva Convention.

[30]

#### ARTICLE 6

Neutral merchantmen, yachts, or vessels, having, or taking on board, sick, wounded, or shipwrecked of the belligerents, cannot be captured for so doing, but they are liable to capture for any violation of neutrality they may have and its members cannot be made prisoners of war. On leaving the ship they take with them the objects and surgical instruments which are their own private property.

#### ARTICLE 7

The religious, medical, and hospital staff of any captured ship is inviolable, and its members cannot be made prisoners of war. On leaving the ship they take with them the objects and surgical instruments which are their own private property.

This staff shall continue to discharge its duties while necessary, and can afterwards leave when the commander in chief considers it possible.

The belligerents must guarantee to the said staff when it has fallen into their hands the enjoyment of their salaries intact.

#### ARTICLE 8

Sailors and soldiers on board when sick or wounded, to whatever nation they belong, shall be protected and tended by the captors.

#### ARTICLE 9

The shipwrecked, wounded or sick of one of the belligerents who fall into the power of the other, are prisoners of war. The captor must decide, according to circumstances, whether to keep them, send them to a port of his own country, to a neutral port, or even to the enemy port. In this last case, the prisoners thus repatriated cannot serve again while the war lasts.

#### ARTICLE 10

The shipwrecked, wounded, or sick, who are landed at a neutral port, with the consent of the local authorities, must, unless an arrangement is made to the

contrary between the neutral State and the belligerent States, be guarded by the neutral State so as to prevent their again taking part in the operations of the war.

The expenses of tending them in hospital and interning them shall be borne by the State to which the shipwrecked, sick or wounded belong.

## FIFTH MEETING

JULY 5, 1899

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His Excellency Mr. Staal presiding.

The meeting opens at 3:45 o'clock.

The minutes of the meeting of June 20 are adopted.

The **President** states that the first business on the agenda is the examination and confirmation of the draft declaration or convention concerning the laws and customs of war on land. He adds:

Before giving the floor to the reporter, I must express the sentiments of the Conference, first before the eminent jurist who has presided with his customary talents over the twelve meetings of the subcommission: Mr. MARTENS is too close to us for me to say more of him without danger of seeming partial. I may be permitted, however, to say to him that a great part of the success is due to him: he has devoted his heart and mind to his task. Theses twelve meetings bear witness to the arduous and continuous work to which the subcommission bent itself to bring to a good issue the work which was assigned it; the subcommission, in which men of such high ability have acted, deserves all our praise; we ought to say as much of the Drafting Committee. You have had once more the good fortune to find in Mr. ROLIN the ideal reporter: exact, impartial, capable of dealing with the whole and with detail; let us thank him for his good work. (*Applause.*)

The **President** grants the floor to Mr. MARTENS, president of the Second Commission, in order to give an account to the Conference of the decisions reached and the *vœux* expressed by this Commission.

Mr. **Martens** does not think that the Conference would care to hear reread the text of the sixty articles adopted by the Commission nor the report presented by Mr. ROLIN on the same subject. These documents are subject to the inspection of the assembly and Mr. MARTENS asks the Conference kindly to approve the work of the Second Commission as shown from the texts voted on and from the interpretative report accompanying them.

As this motion meets with no objection, the **President** declares it carried.

Mr. **Martens** adds that, by virtue of the decision which it has just reached, the Conference accepts the report of Mr. ROLIN as an authentic interpretative commentary of the articles voted on, coming from the whole Conference.

[31] Mr. MARTENS says that he has been instructed by the Second Commission to submit to the approval of the Conference several *vœux* which that Commission discussed and adopted.

The first of these *vœux* was expressed on the initiative of the first delegate of Luxemburg. He expresses the desire of seeing the question of the rights and duties of neutrals inscribed on the program of a later Conference.

This *væu* is adopted without discussion.

The second *væu* bears on the bombardment by a naval force of ports, cities and coast towns which are not defended.

The Second Commission has considered that it would be too complicated to try to solve this question in the present Conference by extending to the bombardment of undefended ports the prohibition prescribed by Article 25 of the Convention relative to the laws of warfare on land. It has, therefore, unanimously with one abstention, expressed the *væu* that this question be deferred for the examination of a later Conference.

It is well understood that this *væu* does not bind the Governments and has no other object than to draw their serious attention to this important subject.

His Excellency Sir Julian Pauncefote says that in his opinion a *væu* of this nature exercises up to a certain point a moral pressure upon the Governments.

He recalls that the British Government took part in the Brussels Conference only on condition that naval questions should remain outside of the provisions adopted.

In the absence of new instructions he could not take part in any decision of this nature, even though it had only the bearing of a simple *væu*.

The President has the declaration of Sir JULIAN PAUNCEFOTE recorded and declares the second *væu* of the Commission adopted.

Mr. Martens says that the third *væu* relates to the revision of the Geneva Convention. It was proposed by the first subcommission of the Second Commission at the suggestion of Mr. ASSER, its president, as follows:

The Conference at The Hague, taking into consideration the preliminary steps taken by the Federal Government of Switzerland for the revision of the Geneva Convention, expresses the *væu* that after a brief delay there should be a meeting of a special conference, having as its object the revision of the said Convention.

This text was adopted by the Second Commission with a motion of Mr. BELDIMAN thus worded:

In expressing the *væu* relative to the Geneva Convention, the Second Commission cordially endorses the declaration made by Mr. ASSER, president of the first subcommission, at the meeting of June 20, at which the delegate of the Netherlands stated that all of the States represented at The Hague would be happy to see the Federal Council of Switzerland take the initiative, after a brief delay, in calling a conference with the view to a convention for the revision of the Geneva Convention.

Mr. Martens states that in expressing this *væu* the Conference does not mean to give the Swiss Federal Government a formal order to call the conference of revision, but merely expresses the desire to see the revision of the Geneva Convention carried out under the auspices of the Swiss Government.

The *væu* and the motion proposed by the Second Commission are adopted.

Mr. Martens says that the fourth *væu* bears on a proposal made to the Conference in the form of a letter addressed to its president by the delegation of the United States of America looking towards a declaration of the immunity of private property on sea in time of war.

The Second Commission has not thought it possible for it to take up this question, either from the point of view of its competence, or from that of the substance of the matter itself; but it believed that it should express the *væu* that

the proposal presented by the delegation of the United States be put on the program of a later Conference.

His Excellency Mr. White asks to develop his proposition and expresses himself in the following terms:

The memorial which has been communicated to the members of the Conference shows that for more than a century the Government of the United States has earnestly endeavored to secure the adoption of the principle of the inviolability of private property, with the exception of contraband, in time of naval war.

In heartily responding to the appeal of His Majesty the Emperor of Russia, and to the invitation of the Government of the Netherlands to take part in this Conference, my Government desired not only to give its support to the main purposes announced in the circular, but it saw there a proper occasion to place this principle once more before the friendly nations, in the hope that it might be adopted as a part of international law.

The commission of the United States of America has found several Powers ready to accept its proposal, and others whose opinions evidently inclined [32] towards its adoption, but it has not succeeded in securing a support sufficiently unanimous to justify it in pressing the matter further during the present Conference.

The doubt generally entertained as to the competence of this Conference, a competence determined by the invitation, and the fact that the delegates of several great Powers have not been furnished with special instructions upon this subject, and, above all, the necessity which the Conference feels of giving all possible time to the great questions which more directly interest the nations, all these circumstances make it evident that there cannot be expected of this Conference a positive and final action regarding this subject.

But, obliged to recognize this fact with a sincere regret, we believe that our instructions impose upon us the duty of doing all that is within our power to bring this great question, so important for us all, before the minds of the nations represented here.

We have not lost the hope of seeing this question brought to a happy solution.

Nothing is more evident than the fact that, more and more, eminent thinkers in the domain of international law are inclining towards the doctrine which we defend.

More and more, also, it is becoming plain that the adoption of this principle is in the interest of all the nations.

It is equally recognized that every agreement to abstain from privateering is vain, if it does not at the same time recognize the inviolability of all private property on the sea, with the exception of contraband of war.

The two systems of injuring the enemy during war are logically united. If the use of one is abstained from, a necessary guaranty is that the other will not be resorted to.

It is becoming more and more evident that the eminent Count NESSELRODE expressed not only his profound conviction, but also a great truth, in affirming that this declaration, which the United States supported in his time as it does now, will be a crown of glory to modern diplomacy.

I am not ignorant that an argument has been advanced which, at first sight, may seem to have considerable force, namely, that even if we should guarantee the inviolability of private property, in so far as it is not contraband of war,



a new and very knotty question would immediately arise, namely; the definition of what should be understood to-day by contraband of war.

Attention is naturally directed toward the fact that coal, breadstuffs, also rice (in one of the recent wars between two great Powers) and even ships, fell under the denomination of contraband.

But I surely need not say to an audience as intelligent and enlightened as this, that the difficulties which may beset the taking of a second step in an affair of this kind do not constitute a reason for renouncing the first step.

The wiser course would seem to be to take the first step and, having taken it, to consider what should be the second.

How can I deny that the efforts made in behalf of the cause we defend, have been weakened by some of the arguments used in its support? It must be admitted that more harm than good has been done by some of the arguments which have likened private property on the sea to private property on the land in time of war. But that proves nothing against the crushing mass of arguments in favor of our proposition.

If the question were under discussion at this moment, if there were not other subjects on which the attention of the world is centered and which absorb our activities, I should like to direct your thoughts to the immense losses which would be suffered by the nations in case of a declaration of war. I would cite as example the losses resulting from the denationalization of vessels and merchandise, without a proportionate effect upon the decision of the question in dispute.

A rapid glance at the history of the Confederate cruisers during the American Civil War shows how serious would be the loss of the Power directly interested. Three Confederate cruisers alone played a part of considerable importance; their prizes amounted to 169 ships; the rate of insurance between the United States and Great Britain increased from 30 to 120 shillings per ton; nearly one half million tons of American merchant shipping were placed under the English flag; the final result was the almost entire disappearance of the merchant marine of the United States. If such a result was secured by the operation of three small ships, far from excellent and badly equipped, what would happen with the means which to-day are at the disposal of the large nations?

[33] Yet all the world knows that this use of privateers had not the slightest effect in terminating or even shortening the war. If those losses had been ten times greater, they would have contributed nothing to the abridgement of hostilities. There would have been simply the destruction of a large quantity of property belonging to the most laborious and the most meritorious part of our population, that of our sailors who had invested in their ships that which they had earned. The most evident result was to leave a cause of resentment between the two great nations,—a resentment which a famous arbitration succeeded in removing. The only effective measure for terminating the war by the action of a navy is the maintenance of a blockade.

To-day the transportation of merchandise by land has so developed that the interruption of such transport by sea cannot, in general, contribute toward hastening the end of the war, but the effect may be so great in the destruction of wealth accumulated by the industry of man, as to require several generations to repair the loss, and thus the whole world is made to suffer.

Gentlemen, the American delegation does not defend the particular interests of its own country. We know very well that, under present conditions, if war

should break out between two or more European Powers, there would be immediately an enormous transfer of freight and ships to neutral countries, and that the United States, as one of them, would reap from it enormous advantages. But my government does not desire to favor interests of this kind. May I not say that a characteristic trait of my fellow citizens has been greatly misunderstood in Europe? Europeans generally suppose that the people of the United States is a people eminently practical. That is true; but it is only one half of the truth; for the people of the United States are not only practical; they are still more devoted to the ideal.

There is no greater error, when one regards the United States, or when one deals with it, than to suppose that its citizens are guided solely by material interests. Our own Civil War shows that the ideal of maintaining the Union of the States led us into conflict which cost the sacrifice of nearly one million men and of nearly ten thousand millions of dollars.

I say this not from vanity, but to show that Americans are not merely practical people, but are idealists also as regards the question of the inviolability of property on the sea; this is not merely a question of interest for us; it is a question of right, of justice, of progress for the whole world, and so my fellow countrymen feel it to be.

In the name, then, of the delegation of the United States, I support the motion to refer the whole question to a future conference. I do so with regret, but in view of the fact that the other interests of the nations here represented demand it.

And in doing so permit me, in the name of the nation which I represent, to commend the consideration of this subject to all those present in this Conference, and especially to the eminent lawyers, to the masters in the science of international law, to the statesmen and diplomatists of the different nations, in the hope that this question may be contained in the program of the next Conference which shall be assembled: the solution of this question, in the sense I have indicated, will be an honor to all those who have participated in it, and will be a lasting benefit to the interested nations. (*Applause.*)

At the request of Mr. **Rahusen** it is decided that the address of His Excellency Mr. **WHITE** shall be inserted *in extenso* in the minutes of this meeting.

His Excellency Count **Nigra** supports the proposal of Mr. **MARTENS**. He has to state that the Italian Government has not limited itself to proclaiming its respect for private property on sea but has sanctioned the principle in its laws. He recalls particularly an article of the treaty of commerce between Italy and the United States which stipulates, under the proviso of reciprocity, the recognition of the inviolability of such property. He asks that official notice be taken of this declaration.

The **President** directs that the declaration of Count **NIGRA** be recorded and consults the Conference on the adoption of the *væu* proposed by the Commission.

His Excellency Sir **Julian Pauncefoot** renews the declaration that he made regarding the second *væu* and says that without instructions from his Government he is obliged to abstain from voting.

Mr. **Bourgeois** makes the same declaration.

The **President** has these declarations recorded and states that the *væu* is adopted.

The **PRESIDENT** says that the committee appointed in the last plenary meeting to draft the Final Act of the Conference and the Conventions attached thereto

has begun its work. Since then, several delegates have expressed the desire to see the composition of the committee completed by the addition of two [34] new members. The PRESIDENT does not see, for his part, any inconvenience in this measure thus limited, and he consequently asks the meeting to ratify the appointment of Messrs. MÉREY VON KAPOŠ-MÉRE, delegate of Austria-Hungary, and SETH Low, delegate of the United States, as members of the committee. (*Adopted.*)

The meeting adjourns at 3:30 o'clock.

### Annex I to the Minutes of the Fifth Meeting, July 5

#### REPORT TO THE CONFERENCE <sup>1</sup>

To the second subcommission was assigned for study the subject, "Revision of the Declaration concerning the laws and customs of war elaborated in 1874 by the Conference of Brussels but not ratified up to the present date." This is the seventh of the subjects for discussion enumerated in the circular of his Excellency Count MOURAVIEFF, dated December 30, 1898 (old style).

It is proper at the outset to define more exactly this subject by recalling that it is very clearly seen from the entire record of the Conference of Brussels that that Conference was concerned with the laws and customs of war *on land* only. Consequently, our subcommission has been constantly governed by the idea that its own competence was limited to a similar extent. It was for this reason that the subcommission in its meeting of June first merely placed on record the proposition of Captain CROZIER, a delegate of the United States of America, looking to the extension of the rules with respect to immunity of private property on land over like property *at sea*. For the same reason the subcommission also preferred to leave to the Commission the solution of the particular question whether the rules regarding *bombardments* are to be applied in cases where ships at sea direct their fire towards points on the coast.

The first care of the subcommission was to determine the method of its deliberations. For the basis of its discussions the text of the articles of the Declaration of the Brussels Conference of 1874 was taken, but in a somewhat different order. The order of the various questions was immediately settled as follows in the meeting of May 25:

1. "Prisoners of war" (Articles 23 and 34).
2. "Capitulations" and "Armistices" (Articles 46 to 52).
3. "Parlementaires" (Articles 43 to 44).
4. "Military power with respect to private individuals" and "Contributions and requisitions" (Articles 36 to 42).
5. Articles 35 and 56 relating to the Geneva Convention.
6. "Spies" (Articles 19 to 22).

<sup>1</sup> [This report is identical with the report (pt. iii, *post*, p. 415) presented by the second subcommission of the Second Commission, and adopted by the Commission on July 5, 1899 (*post*, p. 409)].

7. "Means of injuring the enemy" and "Sieges and bombardments" (Articles 12 to 18).
8. "Internment of belligerents and care of the wounded in neutral countries" (Articles 53 to 55).
9. "Military authority over hostile territory" (Articles 1 to 8).
10. "Those who are to be recognized as belligerents; combatants and non-combatants" (Articles 9 to 11).

This order of discussion, intended to reserve the most delicate questions for the end, was adhered to by the subcommission on the first reading, except that after deliberating on the text of Articles 36 to 39 of the Brussels draft concerning the *military power with respect to private individuals*, the subcommission passed at once to the next numbered subject, the fifth, reserving Articles 40 to 42 on *contributions and requisitions* for examination at the same time with the chapter on *military authority over hostile territory* (No. 9 above and Articles 1 to 8).

Afterwards, however, on the advice of the drafting committee appointed in the meeting of June 12,<sup>1</sup> the subcommission adopted a draft in which the articles are arranged in four sections, the first two sections being divided into chapters and the whole arranged in a new order that seemed more methodical. This [35] draft is the one submitted to the Second Commission, and here annexed under the title, "Draft of a Declaration concerning the laws and customs of war on land." In order to establish constant correlation between that text and the present report, the report is divided into sections and chapters corresponding to those of the draft declaration.

Before passing to the detailed examination of the draft now submitted, the Commission's attention should be called to several communications, more or less general in their bearing, that have been made to the subcommission in the course of its discussions.

At the beginning of the meeting held on June 10, General Sir JOHN ARDAGH, technical delegate of the British Government, read a statement to the effect that in his personal opinion, which could not commit his Government, it would be a mistake to ask "that the revision of the Declaration of Brussels should result in an international Convention."

Without seeking [said Sir JOHN ARDAGH] to know the motives to which may be attributed the non-adoption of the Brussels Declaration, it is permissible to suppose that the same difficulties may arise at the conclusion of our labors at The Hague.

In order to brush them aside and to escape the unfruitful results of the Brussels Conference . . . we would better accept the Declaration only as a general basis for instructions to our troops on the laws and customs of war, without any pledge to accept all the articles as voted by the majority.

According to the opinion of Sir JOHN ARDAGH all Governments would thus, even though adhering to the Declaration, retain "full liberty to accept or modify the articles" of the Declaration.

<sup>1</sup> This drafting committee was formed of Messrs. BELDIMAN, Colonel A COURT, Colonel GILINSKY, Colonel GROSS VON SCHWARZHOFF, LAMMASCH, RENAULT, General ZUCCARI, and ROLIN, the latter in the capacity of reporter. Except on a special occasion the committee was presided over by Mr. MARTENS, president of the Commission and of the subcommission. As Mr. RENAULT was not able to be present at the last meetings, his place was taken by General MOUNIER.

This communication of the technical delegate of Great Britain led Mr. MARTENS to add some information regarding the view which the Imperial Government of Russia takes on the question.

The object of the Imperial Government [said Mr. MARTENS] has steadily been the same, namely, to see that the Declaration of Brussels, revised in so far as this Conference may deem it necessary, shall stand as a *solid basis* for the instructions in case of war which the Governments shall issue to their armies on land. Without doubt, to the end that this basis may be firmly established, *it is necessary to have a treaty engagement* similar to that of the Declaration of St. Petersburg in 1868. It would be necessary that the signatory and acceding Powers should declare in a solemn article that they have reached an understanding as to uniform rules, to be carried over into such instructions. This is the only way of obtaining an obligation binding on the signatory Powers. *It is well understood that the Declaration of Brussels will have no binding force except for the contracting or acceding States.*

From this last sentence it is seen that according to the views of the Russian Government there could be no other course than to conclude a *convention* providing that the adopted rules should not be obligatory *as such* except upon the adhering States. The rules would even cease to be applicable in a war between adhering States if one of them should accept an ally who had not adhered to the Convention.

The delegate of Russia enforced this view by comparing the work to be done with the formation of a "mutual insurance association against the *abuse* of force in time of war," an association which States should be free to enter or not, but which must have its own *by-laws* obligatory upon the members *among themselves*.

In replying to another objection that was made and to which we shall revert later, Mr. MARTENS added that by agreeing to establish a "mutual insurance association against the abuse of force in time of war" for the purpose of protecting the interests of populations against the greatest of disasters, we by no means sanction these disasters, we merely recognize their existence; just as companies that insure against fire, hail, or other calamities, merely state existing dangers.

The last part of Mr. MARTENS' speech was in answer to a fundamental objection advanced by his Excellency Mr. BEERNAERT, the first delegate of Belgium, in an address delivered in the meeting of June 6.

It is correct to say that the address of Mr. BEERNAERT was especially devoted to a consideration of chapters i, ii, and ix of the Declaration of Brussels relative to the occupation of hostile territory, the definition of belligerents and the provisions regarding requisition in kind or of money. Mr. BEERNAERT, apropos of certain clauses in these chapters, put the question whether it is wise "in advance of war and for the case of war, expressly to legalize rights of a victor over the vanquished, and thus organize a *régime* of defeat." He thought it best to adopt no provision except such as would admit the fact without recognizing a right in the victor, and would carry a pledge on the part of the latter to be moderate.

[36] As a matter of fact, these remarks of the first delegate of Belgium had a very general bearing for they are more or less applicable to every part of the Declaration concerning the laws and customs of war. Mr. MARTENS in

reply energetically insisted upon the necessity of not abandoning the vital interests of peaceable and unarmed populations "to the hazards of warfare and international law."

The question thus raised was really whether the fear of appearing by an international regulation to legalize as a right the actual power exercised through force of arms should be a good reason for abandoning the invaluable advantage in a limitation of this power. Besides, no member of the subcommission had any idea that the legal authority in an invaded country should in advance give anything like sanction to force employed by an invading and occupying army. On the contrary, the adoption of precise rules tending to limit the exercise of this power appeared to be an obvious necessity in the real interests of all peoples whom the fortune of war might in turn betray.

The subcommission took into account the views of Mr. BEERNAERT by adopting as its own a declaration which Mr. MARTENS read in the meeting of June 20. The complete text of this declaration will be found below in the commentary upon Articles 1 and 2 (formerly 9 and 10) to which they particularly relate. It should be remembered that, as the subcommission desired, this document is to be given a place in the records of the Conference. As a consequence, the draft is not to be considered as intended to regulate all cases occurring in practice; the law of nations still has its field. Furthermore, it has been formally said that none of the articles of the draft can be considered as entailing on the part of adhering States the recognition of any right whatever in derogation of the sovereign rights of each of them, and that adhesion to the regulations will simply imply for each State the acceptance of a set of legal rules restricting the exercise of the power that it may through the fortune of war wield over foreign territory or subjects.

There still remains to be brought to the notice of the Commission a communication of a general nature. At the meeting of June 3 his Excellency Mr. EYSCHEN, the delegate of the Grand Duchy of Luxemburg, called the attention of the subcommission to the importance of a determination of the rights and duties of neutral States. The subcommission was of the opinion that it should confine itself to examining the questions falling within the terms of the Declaration of Brussels, but it recommended the passage of the resolution expressing the hope "that the question of regulating the rights and duties of neutral States may be inserted in the program of a Conference in the near future."

We now pass to an examination of the text of the draft Declaration, which is divided into four sections.

## SECTION I.—BELLIGERENTS

### CHAPTER I.—*The qualifications of belligerents*

#### (Articles 1 to 3)

The two first articles of this chapter (Articles 1 and 2) were voted unanimously and are word for word the same as Articles 9 and 10 of the Brussels Declaration, with the exception of a purely formal addition to the final paragraph

of the first article made on the second reading, in order to include *volunteer corps* as well as *militia* within the term *army*.

When these articles were first submitted to discussion, Mr. MARTENS read the declaration already spoken of and the subcommission immediately adopted it for submission to the Conference. Its text follows:

The Conference is unanimous in thinking that it is extremely desirable that the usages of war should be defined and regulated. In this spirit it has adopted a great number of provisions which have for their object the determination of the rights and of the duties of belligerents and populations and for their end a softening of the evils of war so far as military necessities permit. It has not, however, been possible to agree forthwith on provisions embracing all the cases which occur in practice.

On the other hand, it could not be intended by the Conference that the cases not provided for should, for want of a written provision, be left to the arbitrary judgment of the military commanders.

- [37] Until a perfectly complete code of the laws of war is issued, the Conference thinks it right to declare that in cases not included in the present arrangement, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity, and the requirements of the public conscience.

It is in this sense especially that Articles 9 and 10 adopted by the Conference must be understood.

The senior delegate from Belgium, Mr. BEERNAERT, who had previously objected to the adoption of Articles 9 and 10 (1 and 2 of the new draft), immediately announced that he could because of this declaration vote for them.

Unanimity was thus obtained on those very important and delicate provisions relating to the fixing of the qualifications of belligerents.

The third and last article of this chapter, which is identical except as to details of form with Article 11 in the Brussels draft, expressly says that non-combatants forming part of an army should also be deemed belligerents, and that both combatants and non-combatants, that is to say *all belligerents*, have a right in case of capture by the enemy to be treated as prisoners of war.

There was some thought of transferring this article, or at least its last sentence, to the chapter on prisoners of war. But in the end it appeared useful, after having defined the conditions of belligerency, to state at once this essential right that a belligerent possesses in case of capture by the enemy, to be treated as a prisoner of war. And besides, this gives us a very natural transition to Chapter II, which follows immediately and fixes the condition of prisoners of war.

Before the above declaration, adopted on the motion of Mr. MARTENS, was communicated to the subcommission General Sir JOHN ARDAGH, technical delegate of Great Britain, proposed to add at the end of the first chapter the following provision:

Nothing in this chapter shall be considered as tending to diminish or suppress the right which belongs to the population of an invaded country to patriotically oppose the most energetic resistance to the invaders by every legitimate means.

From a reading of the minutes of the meeting of June 20, it would seem that most of the members of the subcommission were of opinion that the rule thus

formulated added nothing to the declaration which Mr. MARTENS had read at the opening of that meeting. The delegation of Switzerland, nevertheless, appeared to attach great importance to this additional article and went so far as to suggest that its adhesion to Articles 1 and 2 (Brussels 9 and 10) might not be given if the proposal of Sir JOHN ARDAGH was not adopted. Mr. KÜNZLI spoke to that effect. On the other hand, the technical delegate of Germany, Colonel GROSS VON SCHWARZHOFF, emphatically asserted that Article 9 of Brussels (now the first article) makes recognition of belligerent status depend only on conditions that are very easy to fulfil; he said that there was consequently in his view no need of voting for Article 10 (now Article 2), which also recognizes as belligerents the population of territory that is not yet occupied under the sole condition that it respects the laws of war; but that he had nevertheless voted for that article in a spirit of conciliation. "At this point, however," said the German delegate most emphatically, "my concessions cease; it is absolutely impossible for me to go one step further and follow those who declare for an absolutely unlimited right of defense."

At the end of the debate and in consideration of the declaration adopted on motion of Mr. MARTENS, Sir JOHN ARDAGH withdrew his motion, for the sake of harmony.

## CHAPTER II.—*Prisoners of war*

### (Articles 4 to 20)

The chapter on prisoners of war in the Brussels Declaration of 1874 (Articles 23–34) began with a definition forming the first paragraph of Article 23 and couched in the following terms: "Prisoners of war are lawful and disarmed enemies." This definition was, so to speak, the residuum of another and much longer definition in Article 23 of the first draft submitted to the Brussels Conference by the Imperial Russian Government. Considering the rather vague character of these definitions and the difficulty of finding any other that is more complete and more precise, the subcommission agreed to leave out the definition and to confine itself in this chapter to saying what shall be the treatment of prisoners of war.

It is for these reasons that Article 4, which is the first one under this chapter and corresponds to Article 23 of the Brussels project, begins at once [38] with these words: "Prisoners of war are in the power of the hostile Government, etc."

The paragraph relating to *acts of insubordination* has also been omitted in this article, but it is to be found farther on in Article 8, where it seems better placed.

Most of the other provisions adopted at Brussels concerning this subject of the treatment of prisoners of war have been retained by the subcommission with very slight changes, an explanation of which may be found in the minutes of the meetings of May 27 and 30.

Article 5, respecting internment of prisoners, is an exact copy of Article 24.

Article 6 combines the provisions of Articles 25 and 26 of Brussels in a slightly different wording proposed by Mr. BEERNAERT.

Article 7 is almost the same as the old Article 27, save that it regulates the treatment of prisoners as to *quarters* as well as to food and clothing.



Article 8, respecting the discipline of prisoners of war, corresponds to Article 28 of the Brussels project, but with a few changes other than of form, especially as regards *escapes by prisoners*. An analysis of these changes is given below.

Article 9 repeats literally Article 29 on the declaration of name and rank.

Article 30 of the Brussels project, respecting the *exchange of prisoners*, has been omitted as useless, for the reason that the question of exchange cannot be made the subject of a general rule, inasmuch as an exchange can of course always result from an agreement between the belligerents.

Articles 10, 11 and 12 concerning *liberation on parole* are, except as to a few details of wording, the same as Articles 31, 32 and 33 of the Declaration of Brussels.

But the new Article 13 respecting persons to be classed with prisoners of war differs considerably both in form and substance from Article 34 of the Brussels project.

Finally we come to Articles 14 to 20 which are all new and have been adopted on the motion of Mr. BEERNAERT.

On the whole then, it is proper to furnish special explanations with regard to Article 8 (old 28), Article 13 (old 34), and the new Articles 11 to 17.

As has just been said, a long discussion took place on Article 28, now Article 8, especially on the subject of the *escape* of prisoners of war. Finally it was agreed, as it had been at Brussels in 1874, that an *attempt at escape* should not go entirely unpunished, but that it is desirable to limit the degree of punishment which it may entail, especially to forestall the temptation with the enemy to regard the act as similar to desertion and therefore punishable with death. Consequently it was decided that "escaped prisoners who are retaken before being able to rejoin their army or before having left the territory occupied by the army that captured them are liable to *disciplinary punishment*." Nevertheless, it was agreed in the course of the debate that this restriction has no application to cases where the escape of prisoners of war is accompanied by special circumstances amounting, for example, to a *plot*, a *rebellion*, or a *riot*. In such cases, as General von VOIGTS-RHETZ remarked at Brussels in 1874,<sup>1</sup> the prisoners are punishable under the first part of the same article which says that they are "subject to the laws, regulations, and orders in force in the army of the State in whose power they are"; and it is necessary further to supplement this provision with the one which has been taken from the old Article 23 and added to Article 8, laying down, on the subject of prisoners, that "any act of insubordination justifies the adoption towards them of such measures of severity as may be necessary."

Article 28 of the Brussels project provided particularly that *arms may be used after summoning, against a prisoner of war attempting to escape*. This provision was struck out by the subcommission. In doing so, the subcommission did not deny the right to fire on an escaping prisoner of war if military regulations so provide, but it seemed that no useful purpose would be served in formally countenancing this extreme measure in the body of these articles.

Finally the subcommission retained, with some hesitation, the last paragraph of the article, by the terms of which "prisoners who, after succeeding in escaping, are again taken prisoners, are not liable to any punishment for their previous flight." The subcommission was influenced by the consideration that when a prisoner of war has regained his liberty his situation in fact and in law is in

<sup>1</sup> [Minutes of the meeting of August 6, 1874.]

all respects the same as if he had never been taken prisoner. No actual penalty should therefore apply to him on account of the anterior fact.

Article 34, now Article 13 of the draft of the subcommission, has also undergone considerable change. The old wording was especially wanting in [39] clearness as it seemed to say that the persons meant who accompany the army without being a part of it (such as newspaper correspondents, sutlers, contractors, etc.) shall be made prisoners if they are provided with regular permits. Accordingly it would be literally sufficient in order to be left free not to have the regular permit. Such certainly is not the meaning of this provision. The subcommission consequently adopted at the suggestion of the reporter a more precise wording which closely follows the text of Article 22 of the manual of the laws of war on land of the Institute of International Law. This text keeps in sight the fact that these persons cannot really be considered as prisoners of war at all. But it may be necessary to *detain* them either temporarily or until the end of the war and in this case it will certainly be advantageous for them to be treated like prisoners of war. Nevertheless, they can depend upon obtaining this advantage only if they are "in possession of a certificate from the military authorities of the army they were accompanying."

There remain to be said a few words about the last seven Articles (14-20) of this chapter, which were added to it on the motion of his Excellency Mr. BEERNAERT, the senior delegate of Belgium.

MR. BEERNAERT called attention to the fact that these proposals are by no means new, having been first suggested by Mr. ROMBERG-NISARD, who was actively engaged in relieving the sufferings of the victims of the war of 1870, and never ceased to agitate for better treatment of the wounded and prisoners in wars of the future.

These additional provisions provide, in the first place, for making general the organization of *information bureaus* concerning prisoners, similar to the one instituted in Prussia in 1866 which rendered such great service during the war of 1870-1. This is the object of the first of these articles (Article 14). The second article (Article 15) provides that certain facilities shall be given to such *relief societies for prisoners of war* as are properly constituted. The third article (Article 16) grants *free postage* and other advantages to the information bureaus and in general for shipments made to prisoners. The fourth article (Article 17) has for its object to favor *payment of salary* to prisoners who are officers. The fifth and sixth articles (Articles 18 and 19) secure to prisoners *free exercise of their religion*, grant them facilities for making *wills*, and deal with *death certificates* and *burials*. Finally, the last of these new articles (Article 20) expressly stipulates that after the conclusion of peace "the *repatriation* of prisoners of war shall be carried out as quickly as possible." Immediate absolute liberation is indeed not possible, for it would be sure to lead to disorder.

This Article 20 was to have a second paragraph saying that no prisoner of war can be detained nor his liberation postponed on account of sentences passed upon him or of acts occurring since his capture, crimes or offenses at common law excepted. At the suggestion of Colonel GROSS VON SCHWARZHOF this provision was omitted by common accord in consideration of the requirements of discipline which must be maintained and enforced with sufficient penalties up to the very last day of the captivity of prisoners of war.

The only one of these additional provisions due to the initiative of the senior

delegate of Belgium that has given rise to discussion is the third (Article 16), relative to *postal, customs and other privileges*. But through the hearty support of Mr. LAMMASCH, the technical delegate of Austria-Hungary, and General DEN BEER POORTUGAEL, the second delegate of the Netherlands, this article was also adopted unanimously.

It should be observed that postal and other conventions will have to be modified to conform to this provision. As to the customs franking privilege, it obviously applies only to articles *for the personal use of the prisoners*.

It may be interesting to state here that these Articles 14 to 20 even more than attain the end that the Belgian delegation had in view when, in 1874, at the Brussels Conference, it proposed through the medium of Baron LAMBERMONT six articles relating to relief societies for prisoners of war. These articles were then the subject of a favorable order of the day, but they were not embodied in the project of the Declaration of Brussels.

### CHAPTER III.—*The sick and wounded*

#### (Article 21)

The sole article in this chapter is a literal copy of Article 35 of the Brussels project. It was adopted unanimously and without debate. As the chairman of the subcommission remarked, we confine ourselves to stating that the rules of the Geneva Convention must be observed *between belligerents*. Moreover, the last part of the article anticipates a future modification of that Convention.

[40] As you know, it is stated elsewhere, in Article 60 (old Article 56). that the Geneva Convention likewise applies to the sick and wounded interned in neutral territory.

## SECTION II.—HOSTILITIES

### CHAPTER I.—*Means of injuring the enemy, sieges, and bombardments*

#### (Articles 22 to 28)

This chapter combines under one heading two distinct chapters of the Declaration of Brussels, of which the first was entitled "Means of injuring the enemy" (Articles 12 to 14), and the second "Sieges and bombardments" (Articles 15 to 18).

The union of these chapters in a single one, as proposed by the drafting committee and approved on second reading by the subcommission, had for its object to make it clearly appear that the articles respecting means of doing injury are also applicable to sieges and bombardments.

The new Articles 22, 23, and 24 correspond exactly, aside from some changes of wording, to Articles 12, 13, and 14 of the Declaration of Brussels.

Article 23 begins with the words: "In addition to the prohibitions provided by special conventions, it is especially forbidden. . . ." These special conventions are first the Declaration of St. Petersburg of 1868, which continues in force, and then all those of like nature that may be concluded, especially subsequently to the Hague Conference. It seemed to the subcommission that the

general formula was preferable to the old reading which mentioned only the Declaration of St. Petersburg.

Article 23 forbids, under letter *g*, any destruction or seizure of the enemy's property not demanded by the necessities of war. The drafting committee had proposed to omit this clause as it seemed to it useless in view of the provisions farther on prescribing respect for private property; but the subcommission retained it, on the second reading, at the instance of Mr. BEERNAERT, for the reason that the chapter under consideration deals with limiting the effects of *hostilities*, properly so called, while the other provisions referred to treat more particularly of *occupation* of hostile territory.

The wording of Article 24 (old 14) has been criticized. Taken literally this article might indeed be taken to mean that *every ruse of war* and *every method necessary to obtain information about the enemy and the country* should *ipso facto* be considered "permissible." It is understood that such is by no means the import of this provision, which aims only to say that ruses of war and methods of obtaining information are not prohibited as such. They would cease to be "permissible" in case of infraction of a recognized imperative rule to the contrary.

The Brussels Article 14 particularly cited one of these imperative rules—that which forbids compelling the population of an occupied territory to take part in military operations against their own country (Article 36 of Brussels). But there are many others, such, for example, as the prohibition against the improper use of a flag of truce (Article 23*f*). There are even some that are not expressly sanctioned in any article of the Declaration. And, under these conditions, and not being able to recall all these rules with regard to Article 24, the subcommission thought it was better to mention none of them, believing that the explanation now made would be sufficient to indicate the true meaning of this article.

Articles 25, 26, 27, and 28 are almost word for word the same as Articles 15 to 18 of the Brussels project, the slight modifications therein being purely in expression.

Respecting the prohibition of bombarding towns, villages, dwellings, or buildings which are not defended (Article 25), it is proper to refer to an observation made by Colonel GROSS VON SCHWARZHOFF, who said that this prohibition certainly ought not to be taken to prohibit the destruction of any buildings whatever and by any means when military operations rendered it necessary. This remark met with no objection in the subcommission.

As has been indicated at the beginning of this report, the question was asked whether the last articles of this chapter were to be considered as applicable to bombardment of a place on the coast *by naval forces*. General DEN BEER PORTUGAEL, delegate of the Netherlands, and Mr. BEERNAERT maintained the affirmative. But, on motion of Colonel GILINSKY, technical delegate of the Russian Government, the examination of this question was by general agreement reserved for the Commission in plenary session.

[41]

## CHAPTER II.—*Spies*

(Articles 29 to 31)

The three articles of this chapter reproduce almost literally the wording of Articles 19 to 22 of the Brussels project. Former Articles 19 and 22 have, on

the motion of General MOUNIER, technical delegate of the French Government, merely been combined to form Article 29. These two provisions in reality deal with a single idea, which is to determine who can be considered and treated as a spy, and to specify at once, *merely by way of example*, some special cases in which a person cannot be considered as a spy.

With respect to Article 30 (Article 20 of Brussels) it has been remarked that in applying the penalty the requirement of a previous judgment is, in espionage as in all other cases, a guaranty that is always indispensable, and the new phrasing was adopted with the purpose of saying this more explicitly.

It results from Article 31 (Article 21 of Brussels) that a spy not taken in the act but falling subsequently into the hands of the enemy incurs no responsibility for his previous acts of *espionage*. This special immunity is in harmony with the customs of warfare; but the words in italics have been added, on the second reading, to show clearly that this immunity has reference to acts of espionage only and does not extend to other offenses.

### CHAPTER III.—*Parlementaires*

#### (Articles 32 to 34)

The three articles composing this chapter correspond to Articles 43, 44, and 45 of the Brussels project.

The text of Article 32 differs slightly from that of Article 43. As a consequence the parlementaire may be accompanied not only by a trumpeter, bugler or drummer, and by a flag-bearer, but also by an interpreter. It is also a consequence of the new reading that he may do without one or more of these attendants and go alone carrying the white flag himself.

Article 33, with the exception of some changes in form adopted on the first and second readings, is the same as the first two paragraphs of the Brussels Article 44. It deals with the right that every belligerent has either to refuse to receive a parlementaire, or to take the measures necessary in order to prevent him from profiting by his mission to get information, or finally to detain him in case of abuse. All these rules conform to the necessities and customs of war.

The Brussels Article 44 contained a final paragraph permitting a belligerent to declare "that he will not receive parlementaires during a certain period," and adding that "parlementaires presenting themselves after such a notification, from the side to which it has been given, forfeit the right of inviolability." The loss of inviolability is certainly an extreme penalty; but this special point has no longer any interest, for this provision is omitted in the new draft. It appears from the discussion which took place at the meeting of May 30, and especially from the remarks made on this article by the first delegate of Italy, his Excellency Count NIGRA, that according to the views of the subcommission, the principles of the law of nations do not permit a belligerent ever to declare, even for a limited time, that he will not receive flags of truce. At the Brussels Conference in 1874, moreover, this provision was debated at length and was only finally accepted to satisfy the German delegate, General VON VOIGTS-RIETZ. The technical delegates at the Hague Conference, and conspicuously the German delegate, Colonel GROSS VON SCHWARZHOFF, have on the contrary seemed to consider that the necessities of warfare are sufficiently regarded in the option that every military commander

has of not receiving a flag of truce in all circumstances (first paragraph of Article 33). They accordingly voted with the entire subcommission for the abrogation of the last paragraph of former Article 44.

Article 34 is identical with Article 45 of Brussels. It provides that "the parlementaire loses his rights of inviolability if it is proved in a clear and incontestable manner that he has taken advantage of his privileged position to provoke or commit an act of treason." This provision elicited no remarks as to its substance. It was merely asked how a parlementaire could *commit* an act of treason *against the enemy*. The text was nevertheless retained in view of certain systems of penal legislation which regard the instigator of an offense as a principal.

[42]

CHAPTER IV.—*Capitulations*

(Article 35)

The sole article of this chapter is, with a few changes in wording, like Article 46 of the Brussels project.

The clause according to which "capitulations can never include conditions contrary to honor or military duty," proposed at Brussels by the French delegate, General ARNAUDEAU, and inserted almost literally in Article 46, has been retained in principle. The wording of the new Article 35, as adopted by the subcommission, gives even a more imperative form to this principle by saying that the capitulations "must take into account the rules of military honor."

CHAPTER V.—*Armistices*

(Articles 36 to 41)

This chapter contains six articles corresponding to Articles 47 to 52 of the Brussels project and almost reproduces their wording.

Article 36 determines the *effects and duration of an armistice*; Article 37 distinguishes between *general* and *local* armistices. These two articles are simply reproductions of Articles 47 and 48 of Brussels.

Article 38, dealing with *notification* of an armistice and with *suspension of hostilities*, differs from Brussels Article 49 in admitting that hostilities can be suspended not only from the very moment of notification but after a time agreed upon.

The wording of Article 39 follows that of Article 50 of Brussels, but expands it and renders it more exact. In effect, it permits an armistice to regulate not only the communications *between* the populations but also those *with* them; at the same time it says that this shall only be "in the theatre of war." In the absence of special clauses in the armistice these matters are necessarily governed by the ordinary rules of warfare, especially by those concerning occupation of hostile territory.

The subject of the violation of an armistice by one of the parties gave rise to a discussion in the meeting of May 30. Article 51 of the Brussels project confined itself on this subject to saying that a violation of an armistice by one of the parties gives the other the right to denounce it. At the suggestion of Colonel GROSS VON SCHWARZHOFF, the subcommission admitted that the right to

denounce an armistice would not always be sufficient, and that it was necessary to recognize in the belligerent the right, *in cases of urgency*, "of recommencing hostilities immediately." On the other hand, the subcommission thought that in order to justify a denouncement of an armistice and, with greater reason, to authorize an immediate resumption of hostilities, there must be a *serious* violation of the armistice; it is for this reason that the new Article 40 differs to that extent from the article accepted at Brussels.

Article 52, respecting violation of an armistice *by individuals*, was not changed and has become the new Article 41. It only provides for "the punishment of the offenders and, if necessary, compensation for the losses sustained."

### SECTION III.—MILITARY AUTHORITY OVER THE TERRITORY OF THE HOSTILE STATE

(Articles 42 to 56)

The above title is that of the first chapter (Articles 1 to 8) of the Declaration of Brussels. As early as the meeting of June 1, the subcommission decided to place the articles concerning *contributions* and *requisitions* (Brussels Articles 40 to 42) also in this chapter and to examine them at the same time. Finally it instructed the drafting committee also to place in this chapter the new text that had already been adopted for Articles 36 to 39 inclusive of the Declaration of Brussels, where they form the chapter entitled "Military authority over private individuals." Thus the present chapter has been lengthened considerably. Moreover, the debate on it has been arduous; but the patient courtesy of Mr. MARTENS, chairman of the subcommission, together with the good feeling of all its members, has resulted in the unanimous agreement that every one ardently hoped for.

The first article of this chapter (Article 42), defining occupation, is identical with the first article of the Declaration of Brussels. It should be stated [43] that it was adopted unanimously by the subcommission, as also were all or nearly all of the principal articles of this chapter.

Article 43 condenses into a single text Articles 2 and 3 of the Brussels Declaration. The new wording was proposed by Mr. BIHOUD, the Minister of France at The Hague and one of the delegates of his Government. The last words of Article 43, where it is said that the occupant shall restore or ensure order "while respecting, unless absolutely prevented, the laws in force in the country," really give all the guaranties that the old Article 3 could offer and do not offend the scruples of which Mr. BEERNAERT spoke in his address, referred to at the beginning of this report, which had led him to propose at first that Article 3 be omitted.

The omission of Article 4 of the Brussels Declaration was unanimously voted for at the instance of Mr. BEERNAERT, vigorously supported by Mr. VAN KARNEBEEK. The first delegate of the Netherlands stated that he opposed any provision that might seem directly or indirectly to give the public officers of an invaded country any authority to place themselves at the service of the invader. It was not denied, however, that certain officers, particularly municipal officers, might sometimes best perform their duty, in a moral sense at least, towards their people if they remained at their posts in the presence of the invader.

The four following articles, Article 44 to 47 inclusive, are the Brussels Articles 36 to 39 inclusive, with some very slight changes. They set forth the recognized essential principles which must serve the invader and the occupant as a general rule of conduct in his relations with the population. These principles safeguard the honor and lives of individuals and their private property, whether individual or collective, as well as respect for religious convictions.

It appeared to the subcommission that these articles were well placed in this chapter before the provisions the purpose of which is to set legal limitations upon the actual power that the victor wields in the hostile country.

Besides, as Colonel GROSS VON SCHWARZHOF remarked without contradiction, these limitations could not be deemed to check the liberty of action of belligerents in certain extreme circumstances which may be likened to a kind of legitimate defense.

The new Article 48, like Article 5 of the Brussels Declaration, provides that the occupant shall collect the *existing taxes*, and in this case prescribes that he must "defray the expenses of the administration of the occupied territory to the same extent as the legitimate Government was so bound." It may be observed that the new article adopts a conditional form. This wording was proposed by the reporter with a view to obtaining the support of Mr. BEERNAERT and other members of the subcommission who had expressed the fears with which every wording seemingly recognizing rights in an occupant as such inspired in them.

The four next articles, 49 to 52 inclusive, deal with *extraordinary contributions*, with *fines*, and with *requisitions*, and take the place of Articles 40 to 42 inclusive of the Brussels Declaration. Quite a divergence of views on the subject of these articles was evidenced in the debate.

On motion of Mr. BOURGEOIS, seconded by Mr. BELDIMAN, the question was referred to the drafting committee with an instruction to set forth in a new text only the points on which an agreement seemed possible.

The committee, of which Mr. BOURGEOIS was chairman, made a thorough study of these questions with the active assistance of Messrs. BEERNAERT, VAN KARNEBEEK, and ODIER, and it ascertained that agreement certainly existed on three important points concerning the levying of contributions of any kind in hostile territory. These three points are the following:

1. Every order to collect contributions should emanate from a responsible military chief, and should be given, as far as possible, in writing.
2. For all collections, especially those of sums of money, it is necessary to take into account as far as possible the distribution and assessment of the existing taxes.
3. Every collection should be evidenced by a receipt.

The committee next discussed the question whether it should confine itself to giving expression to these three purely formal conditions and to determining to what extent they are applicable to the requisitions in kind or money and the fines required by the occupant. It came to the conclusion that, relying on the general considerations indicated at the beginning of this report, as being of a nature to dispose of the objections stated by Mr. BEERNAERT, it would be not only possible but also highly desirable to state certain principles on the lines of Articles 40 to 42 of the Brussels Declaration, that is to say, concerning the limitations to be placed on the actual power which the invader exercises against the



legal authorities and which in its tendency weakens the principle of respect for private property. The rules to be laid down relate to three categories of acts:

- [44]     *a.* Requisitions for payments in kind (money being excepted), and for personal services, in other words, "requisitions in kind and services" (Article 51);  
           *b.* The levying and collection of contributions of money beyond the existing taxes (Article 49);  
           *c.* The imposition and collection of what are improperly called "fines" (Article 50).

*a.* As to *requisitions in kind and services*, it has been admitted that the occupant cannot demand them from communes or inhabitants except "for the needs of the army of occupation." This is the rule of necessity; but this necessity is that of maintaining the army of occupation. It is no longer the rather vague criterion of "necessities of war" mentioned in Article 40 of the Brussels project under which, strictly, the country might be systematically exhausted.

It has been fully agreed to retain the provision of Article 40 of the Brussels Declaration which requires that the requisitions and services shall be "in proportion to the resources of the country, and of such a nature as not to involve the population in the obligation of taking part in the operations of the<sup>1</sup> war against their country."

It was necessary to recognize that one of the three formal conditions mentioned above, that of collection "following the local rules of distribution and assessment of taxes," although applicable in a certain degree to contributions in personal services, is evidently not applicable to requisitions in kind properly so called, that is to say, the requisition of particular objects in the hands of their owners either to make temporary use of them or for consumption. The committee therefore thought, and the subcommission agreed thereto, that some limitation should be stated here so that the requisitions and services demanded will be "in proportion to the resources of the country."

There remain two other formal conditions that were agreed upon, one respecting the order for the collection and the other respecting the receipt. These two conditions already appeared in Article 42 of the Brussels project, and the committee had little to do beyond reproducing them. In conformity with the Brussels text it has been agreed that the requisition orders must emanate only from the commander on the spot, but that in this case the requirement of a written order would be excessive. Military necessities are opposed to demanding for ordinary daily requisitions a higher authority than that of the officer on the spot, and a written order would be superfluous in view of the obligation to give a receipt.

Lastly, the wording agreed upon in the matter of requisitions recommends the rule of payment therefor in money, although such payment is not made a hard-and-fast obligation. Such payments will ordinarily take place under the form of real purchases instead of requisitions. And it is to be noted that this will often be not only a method of strict humanity but also commonly one of shrewd policy, if only to deter the people from hiding their provisions and produce. Besides, the army of occupation will obtain in the same country the money necessary for payments on account of requisitions or purchases by means of contribu-

<sup>1</sup> [This word "the" does not appear in the Declaration of Brussels.]

tions whose weight will be distributed over all, whilst requisitions without indemnity strike at random upon isolated individuals.

*b.* As to the *money contributions* that the occupant may wish to collect beyond the regular taxes, the subcommission at the instance of the drafting committee agreed upon the very interesting and valuable rule for occupied territory, that except in the special cases of fines, which are the subject of a separate article, these contributions can, like requisitions, be levied "for the needs of the army" alone. The only other legitimate motive for collecting these contributions would lie in the administrative needs of the occupied territory, and the population thereof evidently cannot make a just complaint on that score.

On the whole what is forbidden is levying contributions for the purpose of enriching oneself.

It is important to state that this formula is more stringent than that of Article 41 of the Brussels Declaration; and right here is a point that received the especial attention of those members of the subcommission who, being properly interested by the situation of their countries, showed themselves above all solicitous to restrain as far as possible by legal rules the absolute liberty of action that success in arms actually gives to an invader.

The three formal conditions indicated above (the order for collection, the collection, and the receipt) have unlimited application to these contributions, but it seemed best to insert them in a special article applicable to every collection of money.

*c.* As to *fines*, a separate article seemed necessary in order that it might be determined as exactly as possible in what cases it is proper to impose fines.

In the view of the committee the word *fines* itself is not quite apt because [45] it lends itself to confusion in thought with penal law. Certain members of the committee have even urged that the use of the word "repression" be avoided.

According to the point of view at first taken by the subcommission, this article ought to deal only with what is given the special designation "*fines*" in the law of war, that is a particular form of extraordinary contribution consisting in the collection of sums of money by the occupant for the purpose of checking acts of hostility. On this subject the subcommission was unanimously of opinion that this means of restraint which strikes the mass of the population ought only to be applied as a consequence of reprehensible or hostile acts committed by it as a whole or at least permitted by it to be committed. Consequently, acts that are strictly those of individuals could never give rise to collective punishment by the collection of extraordinary contributions, and it is necessary that in order to inflict a penalty on the whole community there must exist as a basis therefor *at the very least a passive responsibility therefor* on the part of the community. Having proceeded thus far upon this course, the drafting committee first, and then the subcommission, thought they could go still further and, without prejudging the question of reprisals, declare that this rule is true, not only for fines, but for every penalty, whether pecuniary or not, that is sought to be inflicted upon the whole of a population.

Finally, the subcommission approved the special Article 52 proposed by the committee, concerning the three formal rules applicable to every collection whatever of sums of money by the occupant.

It is on the strength of the foregoing considerations that the subcommission

has adopted with only a few slight modifications in form Articles 49 to 52 of the text proposed to it by the drafting committee.

It is also proper to say that these provisions have been voted unanimously with the exception of the vote of the delegate of Switzerland on Articles 51 and 52. That delegate had proposed in behalf of his Government that the right to claim payment or reimbursement *on the evidence of the receipts* be expressly stipulated in these articles. The subcommission thought that such a stipulation would be out of place in the proposed Declaration as it relates rather to internal public law and will naturally be the subject of one of the clauses of the treaty of peace.

The next article, bearing the number 53, corresponds to Article 6 of the Brussels Declaration. It deals with seizure by the occupant of the personal property of the hostile State and, by extension, of all material serviceable for carrying on war and especially of *railway plant*.

The subcommission unanimously adopted the first paragraph of this article at once without making any change therein. Such was not the case with the second paragraph, which derogates, especially in the matter of railway plant, from the principle of respect for private property. Mr. BEERNAERT proposed to indicate that seizure of this material can only be in the nature of a *sequestration*, aside from the option of *requisitioning* it for the needs of the war. This proposal was discussed at length, with the result that this paragraph and its amendments were returned to the drafting committee. That committee expressed the opinion that if greater exactness were given to the wording of this provision, it would probably be impossible to reach an agreement, and that it therefore seemed best to preserve as far as possible the text of the Brussels draft. Nevertheless the draft was condensed into a single sentence for the sake of precision, and, on the proposal of the drafting committee, the subcommission also decided to omit an ambiguous clause which said that the means in question of carrying on war "cannot be left by the army of occupation at the disposal of the enemy." Moreover this clause seemed to contain an allusion to the idea of sequestration which the subcommission wished to avoid.

On the other hand, the drafting committee and later the subcommission accepted the principle of the amendment proposed by Mr. BILLE, the senior delegate of Denmark, concerning "shore ends of cables." It was therefore decided to say: "Land telegraphs *including shore ends of cables*."<sup>1</sup> The author of the amendment further specified the shore ends of cables which are "established within the maritime territorial limits of the State."

As it was necessary to refrain from dealing here, even incidentally, with the very delicate questions of the nature of the rights of a State over the adjacent territorial sea and of the extent of such marginal waters, the last words of Mr. BILLE's amendment were not adopted.

Furthermore, on motion of Mr. LAMMASCH, it was decided that the article should mention *telephones*.

It did not seem opportune to make any special stipulation with regard to the application of this article that the belligerent who makes a seizure is [46] obliged to give a receipt as in the case of requisitions; but the committee was nevertheless of opinion that the fact of seizure should be clearly

<sup>1</sup> [In the seventh plenary meeting of the Conference, July 25, 1899, the words "including shore ends of cables" were struck out from the draft regulations. Pt. i, *post*, p. 101.]

stated one way or another if only to furnish the owner of the articles seized with an opportunity to claim the indemnity expressly provided in the text.

The proposal by Mr. ODIER that "railway plant even when belonging to the enemy State shall be restored at the conclusion of peace" was not accepted, as the committee believed that this question was among those that should be settled by the treaty of peace.

Article 54, which is wholly new and due to the initiative of Messrs. BEER-NAERT and EYSCHEN, prescribes that: "the plant of railways coming from neutral States, whether the property of those States or of companies or of private persons, shall be sent back to them as soon as possible." Mr. BEERNAERT had suggested ordering *immediate restitution of this material with a prohibition of using it for the needs of the war*; but the subcommission agreed with the drafting committee in thinking that it was sufficient to lay down the principle of restitution within a short time for the sole purpose of pointing out that the material belonging to neutrals, unlike that of belligerents, cannot be the object of seizure.

Article 55, relative to the administration of State property in occupied territory, is a verbatim reproduction of Article 7 of the Brussels draft.

Article 56, too, which relates to respect for property belonging to communes and charitable and other institutions, is identical with the Brussels Article 8, save for a very slight change in wording of the second paragraph. There can be no doubt that the expression "institutions dedicated to religion" found in this Article 56, applies to all institutions of that kind, as churches, temples, mosques, synagogues, etc., without any discrimination between the divers forms of worship. This was already affirmed at Brussels in 1874,<sup>1</sup> and it is likewise the answer given for the committee to General MIRZA RIZA KHAN, the senior delegate of Persia, in response to a request for explanation.

A general observation should be made on the subject of all the articles comprised in Section III. This is that the restrictions imposed on the liberty of action of an occupant apply *a fortiori* to an invader when an occupation has not yet been established in the sense of Article 42.

Thus Articles 44 and 45 apply to the invader as well as to the occupant, and either of them will necessarily be forbidden to force the population of a territory to take part in military operations against its own country or to swear allegiance to the hostile Power.

As to the collection of contributions and requisitions or to the seizure of *matériel*, it is understood that an invader shall stand in these matters in the same position as an occupant.

#### SECTION IV.—THE INTERNMENT OF BELLIGERENTS AND THE CARE OF THE WOUNDED IN NEUTRAL STATES

(Articles 57 to 60)

The four articles comprised in this final chapter of the draft voted by the subcommission are a verbatim copy of Articles 53 to 56 inclusive of the Brussels project, with the exception of the addition of a supplementary paragraph to Article 59.

<sup>1</sup> [Protocol No. 18.]

At the opening of the discussion on these articles, and particularly with reference to the first one, which treats of the *internment* of belligerents on neutral territory, his Excellency Mr. EYSCHEN, the senior delegate of Luxemburg, in the meeting of June 6 spoke of the special situation of the Grand Duchy under the Treaty of London of 1867 with regard to this obligation to intern belligerents. That treaty disarmed the Luxemburg Government, and does not permit it to maintain more troops than are necessary to preserve public order. The result is that Luxemburg could not assume the same obligation as the other States. On the request of Mr. EYSCHEN record was made of his declaration that he intends to reserve to his country all rights under the Treaty of London of May 11, 1867, and especially Articles 2, 3, and 5 thereof.

Articles 53 and 54 of the Brussels project respecting the internment of belligerents on neutral territory were then adopted without modification and have become Articles 57 and 58 of the subcommission's draft.

Article 59 relating to passage over <sup>1</sup> neutral territory, that is to say across neutral territory, of the wounded or sick belonging to belligerent armies, is like the Brussels Article 55 except for the addition of the third paragraph. This supplementary paragraph was adopted on the first reading on motion of [47] Mr. BEERNAERT and General MOUNIER, as follows: "When once admitted into neutral territory, the sick or wounded can be returned only to their country of origin."

But doubts immediately arose as to the exact meaning of this stipulation. Several members of the committee believed that it gave authority to the neutral State to restore the wounded and sick forthwith to their country of origin, whereas evidently the only question should be that of forbidding the use of neutral territory for the purpose of conveying sick or wounded to a hostile country where they would become prisoners of war. The new draft precludes all doubt, by saying that "wounded or sick brought under these conditions into neutral territory by one of the belligerents, and belonging to the hostile party, must be guarded by the neutral State, so as to ensure their not taking part again in the operations of the war." General ZUCCARI, the technical delegate of the Italian Government, declared that having in view respect for absolute impartiality on the part of neutrals, he regretted that he could not give his approval to this last wording any more than to the preceding one.

There remained the case of wounded or sick belonging to the army of the belligerent which is conveying them, but which for one reason or another, instead of simply *passing* through the neutral territory, stops there. It surely would be extraordinary if they could, when they recover, take part again in the operations of the war, and that is why the subcommission adopted on second reading, on the motion of Mr. BEERNAERT, an additional provision stipulating that these wounded or sick must likewise be guarded by the neutral State.

Mr. CROZIER had drawn the attention of the subcommission to a contradiction existing in his opinion between the paragraph in question and Article 10 of the draft for the adaptation of the principles of the Geneva Convention to

<sup>1</sup> [The Declaration of Brussels has "passage *par son territoire*." In 1899 the *par* was replaced by *sur*, which appeared in the subcommission's draft and persisted although the subcommission decided (pt. iii, *post*, p. 509) that the first two paragraphs of Article 55 of the Brussels Declaration should be preserved in their existing wording. Amid the variety of translations we follow Professor Holland in rendering *sur* by *over* in this phrase.]

maritime warfare. It seems that this contradiction was only apparent; but in any case it disappears in the new wording.

With respect to the whole principle of Article 59, General MOUNIER had appeared rather inclined to ask that the sick and wounded be denied any passage, in view of the indirect service that the neutral State could render to one of the belligerents by making it easy for him to relieve himself of his wounded and sick. The whole subcommission was agreed that the neutral State should be guided by rules of absolute impartiality in lending its humane aid under such circumstances, and in the meeting of June 8 a sort of authentic commentary on the meaning of this Article was proposed by Mr. BEERNAERT, accepted by General MOUNIER, and unanimously adopted. This official explanation is in the following terms:

This article has no other bearing than to establish that considerations of humanity and hygiene may determine a neutral State to allow wounded or sick soldiers to pass across its territory without failing in its duties of neutrality.

Finally Article 60 reproduces verbatim the final Article 56 of the Declaration of Brussels. It prescribes that the Geneva Convention applies to sick and wounded interned in neutral territory.

After the Commission shall have decided on the text of the project of "the Declaration concerning the laws and customs of war on land," its first care might be to consider under what form it would be preferable to sanction the obligatory character of the articles of this Declaration.

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[48]      **Annex 2 to the Minutes of the Fifth Meeting, July 5**

**DECLARATION CONCERNING THE LAWS AND CUSTOMS OF  
WAR ON LAND**

**SECTION I.—ON BELLIGERENTS**

**CHAPTER I.—*The qualifications of belligerents***

**ARTICLE 1**

The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions:

1. That they be commanded by a person responsible for his subordinates;
2. That they have a fixed distinctive emblem recognizable at a distance;
3. That they carry arms openly; and
4. That they conduct their operations in accordance with the laws and customs of war.

In countries where militia or volunteer corps constitute the army, or form part of it, they are included under the denomination *army*.

## ARTICLE 2

The population of a territory which has not been occupied who, on the approach of the enemy, spontaneously take up arms to resist the invading troops without having time to organize themselves in accordance with Article 1, shall be regarded as belligerents if they respect the laws and customs of war.

## ARTICLE 3

The armed forces of the belligerent parties may consist of combatants and non-combatants. In case of capture by the enemy, both have a right to be treated as prisoners of war.

CHAPTER II.—*Prisoners of war*

## ARTICLE 4

Prisoners of war are in the power of the hostile Government, but not in that of the individuals or corps who captured them.

They must be humanely treated.

All their personal belongings, except arms, horses, and military papers, remain their property.

## ARTICLE 5

Prisoners of war may be interned in a town, fortress, camp, or other place, under obligation not to go beyond certain fixed limits; but they can only be placed in confinement as an indispensable measure of safety.

## ARTICLE 6

The State may utilize the labor of prisoners of war according to their rank and aptitude. The tasks shall not be excessive and shall have no connection with the operations of the war.

Prisoners may be authorized to work for the public service, for private persons, or on their own account.

Work done for the State is paid for at the rates in force for work of a similar kind done by soldiers of the national army.

When the work is for other branches of the public service or for private persons, the conditions are settled in agreement with the military authorities.

[49] The wages of the prisoners shall go toward improving their position, and the balance shall be paid them at the time of their release, after deducting the cost of their maintenance.

## ARTICLE 7

The Government into whose hands prisoners of war have fallen is charged with their maintenance.

In the absence of a special agreement between the belligerents, prisoners of war shall be treated as regards food, quarters, and clothing, on the same footing as the troops of the Government which has captured them.

## ARTICLE 8

Prisoners of war shall be subject to the laws, regulations, and orders in force in the army of the State in whose power they are. Any act of insubordi-

nation justifies the adoption towards them of such measures of severity as may be necessary.

Escaped prisoners who are retaken before being able to rejoin their army or before leaving the territory occupied by the army that captured them are liable to disciplinary punishment.

Prisoners who, after succeeding in escaping, are again taken prisoners, are not liable to any punishment for the previous flight.

#### ARTICLE 9

Every prisoner of war is bound to give, if questioned on the subject, his true name and rank, and if he infringes this rule, he is liable to a curtailment of the advantages accorded to the prisoners of war of his class.

#### ARTICLE 10

Prisoners of war may be set at liberty on parole if the laws of their country allow it, and, in such cases, they are bound, on their personal honor, scrupulously to fulfil, both toward their own Government and the Government by which they are made prisoners, the engagements they have contracted.

In such cases their own Government is bound neither to require of nor accept from them any service incompatible with the parole given.

#### ARTICLE 11

A prisoner of war can not be compelled to accept his liberty on parole; similarly the hostile Government is not obliged to accede to the request of the prisoner to be set at liberty on parole.

#### ARTICLE 12

Any prisoner of war liberated on parole and retaken bearing arms against the Government to which he had pledged his honor, or against the allies of that Government, forfeits his right to be treated as a prisoner of war, and can be brought before the courts.

#### ARTICLE 13

Individuals who follow an army without directly belonging to it, such as newspaper correspondents and reporters, sutlers and contractors, who fall into the enemy's hands, and whom the latter thinks fit to detain, are entitled to be treated as prisoners of war, provided they are in possession of a certificate from the military authorities of the army they were accompanying.

#### ARTICLE 14

An information bureau relative to prisoners of war is instituted, on the commencement of hostilities, in each of the belligerent States, and, when necessary, in neutral countries which have received belligerents in their territory. The function of this bureau is to reply to all inquiries about the prisoners, to receive from the various services concerned all the information necessary to enable it to make out an individual return for each prisoner of war. It is kept informed of internments and transfers, as well as of admissions into hospitals and deaths.

It is likewise the function of the information bureau to receive and collect



all objects of personal use, valuables, letters, etc., found on the field of battle or left by prisoners who have died in hospitals or ambulances, and to forward them to those concerned.

[50]

## ARTICLE 15

Relief societies for prisoners of war, which are properly constituted in accordance with the laws of their country and with the object of serving as the channel for charitable effort shall receive from the belligerents, for themselves and their duly accredited agents, every facility for the efficient performance of their humane task within the bounds imposed by military necessities and administrative regulations. Agents of these societies may be admitted to the places of internment for the purpose of distributing relief, as also to the halting-places of repatriated prisoners, if furnished with a personal permit by the military authorities, and on giving an undertaking in writing to comply with all measures of order and police which the latter may issue.

## ARTICLE 16

Information bureaux enjoy the privilege of free postage. Letters, money orders, and valuables, as well as parcels by post, intended for prisoners of war, or dispatched by them, shall be exempt from all postal duties in the countries of origin and destination, as well as in the countries they pass through.

Presents and relief in kind for prisoners of war shall be admitted free of all import or other duties, as well as of payments for carriage by State railways.

## ARTICLE 17

Officers taken prisoners may receive, if necessary, the full pay allowed them in this position by their country's regulations, the amount to be refunded by their Government.

## ARTICLE 18

Prisoners of war shall enjoy complete liberty in the exercise of their religion, including attendance at the services of whatever church they may belong to, on the sole condition that they comply with the measures of order and police issued by the military authorities.

## ARTICLE 19

The wills of prisoners of war are received or drawn up in the same way as for soldiers of the national army.

The same rules shall be observed regarding death certificates as well as for the burial of prisoners of war, due regard being paid to their grade and rank.

## ARTICLE 20

After the conclusion of peace, the repatriation of prisoners of war shall be carried out as quickly as possible.

CHAPTER III.—*The sick and wounded*

## ARTICLE 21

The obligations of belligerents with regard to the sick and wounded are governed by the Geneva Convention of August 22, 1864, subject to any modifications which may be introduced into it.

## SECTION II.—ON HOSTILITIES

CHAPTER I.—*Means of injuring the enemy, sieges and bombardments*

## ARTICLE 22

The right of belligerents to adopt means of injuring the enemy is not unlimited.

## ARTICLE 23

In addition to the prohibitions provided by special conventions, it is especially forbidden:

- (a) To employ poison or poisoned weapons;
- [51] (b) To kill or wound treacherously individuals belonging to the hostile nation or army;
- (c) To kill or wound an enemy who, having laid down his arms, or having no longer means of defense, has surrendered at discretion;
- (d) To declare that no quarter will be given;
- (e) To employ arms, projectiles, or material calculated to cause unnecessary suffering;
- (f) To make improper use of a flag of truce, of the national flag, or of the military insignia and uniform of the enemy, as well as the distinctive badges of the Geneva Convention;
- (g) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war.

## ARTICLE 24

Ruses of war and the employment of measures necessary for obtaining information about the enemy and the country are considered permissible.

## ARTICLE 25

It is forbidden to attack or bombard towns, villages, dwellings, or buildings that are not defended.

## ARTICLE 26

The officer in command of an attacking force must, before commencing a bombardment, except in cases of assault, do all in his power to warn the authorities.

## ARTICLE 27

In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes.

It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand.

## ARTICLE 28

It is forbidden to give over to pillage even a town or place taken by storm.

CHAPTER II.—*Spies*

## ARTICLE 29

A person can only be considered a spy when, acting clandestinely or on false pretenses, he obtains or endeavors to obtain information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party.

Thus, soldiers not wearing a disguise who have penetrated into the zone of operations of the hostile army, for the purpose of obtaining information, are not considered spies. Similarly, the following are not considered spies: Soldiers and civilians carrying out their mission openly, entrusted with the delivery of dispatches intended either for their own or for the enemy's army. To this class belong likewise persons sent in balloons for the purpose of carrying dispatches and, generally, of maintaining communications between the different parts of an army or a territory.

## ARTICLE 30

A spy taken in the act shall not be punished without previous trial.

## ARTICLE 31

A spy who, after rejoining the army to which he belongs, is subsequently captured by the enemy, is treated as a prisoner of war, and incurs no responsibility for his previous acts of espionage.

[52]

CHAPTER III.—*Parlementaires*

## ARTICLE 32

A person is regarded as a parlementaire who has been authorized by one of the belligerents to enter into communication with the other, and who advances bearing a white flag. He has a right to inviolability, as well as the trumpeter, bugler or drummer, the flagbearer and the interpreter who may accompany him.

## ARTICLE 33

The commander to whom a parlementaire is sent is not in all cases obliged to receive him.

He may take all necessary steps in order to prevent the parlementaire taking advantage of his mission to obtain information.

In case of abuse, he has the right to detain the parlementaire temporarily.

## ARTICLE 34

The parlementaire loses his rights of inviolability if it is proved in a clear and incontestable manner that he has taken advantage of his privileged position to provoke or commit an act of treason.

CHAPTER IV.—*Capitulations*

## ARTICLE 35

Capitulations agreed upon between the contracting parties must take into account the rules of military honor.

Once settled, they must be scrupulously observed by both parties.

CHAPTER V.—*Armistices*

## ARTICLE 36

An armistice suspends military operations by mutual agreement between the belligerent parties. If its duration is not defined, the belligerent parties may resume operations at any time, provided always that the enemy is warned within the time agreed upon, in accordance with the terms of the armistice.

## ARTICLE 37

An armistice may be general or local. The first suspends the military operations of the belligerent States everywhere; the second only between certain fractions of the belligerent armies and within a fixed radius.

## ARTICLE 38

An armistice must be notified officially and in good time to the competent authorities and to the troops. Hostilities are suspended immediately after the notification, or on the date fixed.

## ARTICLE 39

It rests with the contracting parties to settle, in the terms of the armistice, what communications may be held in the theatre of war with the populations and between them.

## ARTICLE 40

Any serious violation of the armistice by one of the parties gives the other party the right of denouncing it, and even, in cases of urgency, of recommencing hostilities immediately.

## ARTICLE 41

A violation of the terms of the armistice by private persons acting on their own initiative only entitles the injured party to demand the punishment of the offenders and, if necessary, compensation for the losses sustained.

[53] SECTION III.—ON MILITARY AUTHORITY OVER THE TERRITORY  
OF THE HOSTILE STATE

## ARTICLE 42

Territory is considered occupied when it is actually placed under the authority of the hostile army.

The occupation extends only to the territory where such authority has been established and can be exercised.

## ARTICLE 43

The authority of the legitimate Power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

## ARTICLE 44

It is forbidden to force the population of the occupied territory to take part in military operations against its own country.

## ARTICLE 45

It is forbidden to compel the population of occupied territory to swear allegiance to the hostile Power.

## ARTICLE 46

Family honor and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected.

Private property can not be confiscated.

## ARTICLE 47

Pillage is formally forbidden.

## ARTICLE 48

If, in the territory occupied, the occupant collects the taxes, dues, and tolls imposed for the benefit of the State, he shall do so, as far as possible, in accordance with the rules of assessment and incidence in force, and shall in consequence be bound to defray the expenses of the administration of the occupied territory to the same extent as the legitimate Government was so bound.

## ARTICLE 49

If, in addition to the taxes mentioned in the above article, the occupant levies other money contributions in the occupied territory, it shall only be for the needs of the army or of the administration of the territory in question.

## ARTICLE 50

No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they can not be regarded as jointly and severally responsible.

## ARTICLE 51

No contribution shall be collected except under a written order, and on the responsibility of the commander in chief.

The collection of the said contribution shall only be effected as far as possible in accordance with the rules of assessment and incidence of the taxes in force.

For every contribution a receipt shall be given to the contributors.

## ARTICLE 52

Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the population in the obligation of taking part in the operations of the war against their country.

[54] Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied.

Contributions in kind shall, as far as possible, be paid for in cash; if not, a receipt shall be given.

#### ARTICLE 53

An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for the operations of the war.

Railway plant, land telegraphs, including shore ends of cables, telephones, steamers and other ships, apart from cases governed by maritime law, as well as depots of arms and generally all kinds of munitions of war, even though belonging to companies or to private persons, are likewise material which may serve for military operations, but they must be restored and compensation fixed when peace is made.

#### ARTICLE 54

The plant of railways coming from neutral States, whether the property of those States or of companies or of private persons, shall be sent back to them as soon as possible.

#### ARTICLE 55

The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.

#### ARTICLE 56

The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property.

All seizure or destruction of, or wilful damage to, institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.

### SECTION IV.—ON THE INTERNMENT OF BELLIGERENTS AND THE CARE OF THE WOUNDED IN NEUTRAL COUNTRIES

#### ARTICLE 57

A neutral State which receives on its territory troops belonging to the belligerent armies shall intern them, as far as possible, at a distance from the theatre of war.

It may keep them in camps, and even confine them in fortresses or in places set apart for this purpose.

It shall decide whether officers can be left at liberty on giving their parole not to leave the neutral territory without permission.

## ARTICLE 58

In the absence of a special convention, the neutral State shall supply the interned with the food, clothing, and relief required by humanity.

At the conclusion of peace the expenses caused by the internment shall be made good.

## ARTICLE 59

A neutral State may authorize the passage over its territory of wounded or sick belonging to the belligerent armies, on condition that the trains bringing them shall carry neither personnel nor material of war. In such a case, the neutral State is bound to take whatever measures of safety and control are necessary for the purpose.

Wounded or sick brought under these conditions into neutral territory by one of the belligerents, and belonging to the hostile party, must be guarded by the neutral State, so as to ensure their not taking part again in the operations of the war. The same duty shall devolve on the neutral State with regard to wounded or sick of the other army who may be committed to its care.

[55]

## ARTICLE 60

The Geneva Convention applies to sick and wounded interned in neutral territory.

## SIXTH MEETING

JULY 21, 1899

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His Excellency Mr. Staal presiding.

The meeting opens at 2 o'clock.

The **President** takes the chair and addresses the assembly in these terms:

Before passing to the business on the agenda, I must first discharge a mandate from my august master, His Majesty the Emperor of All the Russias.

His Majesty has been profoundly touched by the sentiments of sympathy which have been expressed to him on the occasion of the misfortune which has befallen the Imperial family, and to which the vice president has given such eloquent expression.

My august sovereign has charged me with conveying to the Conference his thanks for this manifestation of condolence.

The **PRESIDENT** recalls that the first business on the agenda is the examination of the report of the First Commission. He thanks Mr. VAN KARNEBEEK for undertaking to make this report.

The minutes of the fifth meeting which have been printed and distributed among the members, are adopted.

The **Reporter** submits to the Conference the first point of the first division of the report, as it has been approved by the First Commission the day before.

It has adopted unanimously the engagement to prohibit the launching of projectiles and explosives from balloons, or in other analogous new ways, for a period of five years.

The **REPORTER** proposes to the Conference, in the name of the Commission, to make a declaration carrying the above-mentioned engagement.

This proposal is adopted by the Conference unanimously.

The meeting passes to the second point: prohibition of the use of projectiles which have for their sole end the spreading of asphyxiating or deleterious gases.

This engagement is adopted unanimously less two votes (United States of America and Great Britain).

The **Reporter** makes to the Conference an identical proposal respecting the third point: engagement to prohibit the use of bullets which expand and flatten easily in the human body, such as bullets with a hard envelope, which envelope does not entirely cover the core or is pierced with incisions.

Captain **Crozier** takes the floor and speaks as follows:

The general principle touching the subject was well stated at St. Petersburg in 1868, *viz.*, that justifiable limits would be exceeded by the "use of arms which would aggravate uselessly the sufferings of men already placed *hors de combat*, or would render their death inevitable." The Convention of St. Petersburg con-



fined itself, then, to proscribing the violation of this principle, the only one comprehended at that time, *i.e.*, the use of explosive projectiles weighing less than 400 grammes.

It is now desired to extend the prohibition to other than explosive bullets. This covers the inventions having in view the increase of the shock produced by the bullets of small calibres now in use, and of the smaller calibres which may be adopted.

In formulating a prohibition of this kind, what is the object to be kept in view?

[56] Evidently to forbid everything, which, in the direction of cruelty, goes beyond necessity. And what is necessary? The declaration of St. Petersburg says: "It is sufficient to place *hors de combat* the greatest number of men possible."

My honorable colleague, the delegate from Russia, has stated here, that "the object of war is to put men *hors de combat*." For military men there can be but one answer to the question that I have put, namely, that the man hit by a bullet shall be placed *hors de combat*. With the attainment of this object in view, as well as the prohibition of everything beyond it, I propose the formula amended as follows:

The use of bullets inflicting wounds of useless cruelty, such as explosive bullets, and in general all kinds of bullets which exceed the limit necessary for placing a man *hors de combat* should be forbidden.

This formula clearly denotes all that the world admits and all that is admissible.

It has also been stated that "ordinary bullets suffice to place men *hors de combat*."

There are differences of opinion as to this, as covering all cases. I can speak of them freely because the United States are satisfied with their bullet, and see no reason for changing it. But whatever may be the case with the bullets actually in use, no one can say what will be if the decrease of calibre, which the Conference has not limited, shall continue. And here we see the weak point of the article: it confines the prohibition to a single class, *viz.*: bullets which expand or flatten, and gives as illustration certain details for construction of these bullets:

The use of bullets inflicting wounds of useless cruelty, such as explosive bullets, and in general, every kind of bullets which exceeds the limit necessary for placing a man *hors de combat*, should be forbidden.

The advantages of the small calibre are well known; flatter trajectory, greater danger space, less recoil, and, particularly, less weight of ammunition. Now if any nation shall consider these advantages sufficiently great to wish to pass to a small calibre, which is to be regarded as quite possible, her military experts will at once occupy themselves with a method of avoiding the principal disadvantage of a smaller calibre, *i.e.*, the absence of shock produced by the bullet. In devising means to increase the shock they will naturally examine the prohibitions which have been imposed, and they will find that with the exception of the two classes, explosive bullets and bullets which expand or flatten, the field is entirely clear. They will see that they can avoid the forbidden detail of

construction by making a bullet with a large part of the envelope so thin as to be ineffective, and that they can avoid altogether the proscribed classes; first, by making a bullet such that the point would turn easily to one side upon entering the body, so as to cause it to turn end over end, revolving about its shorter axis (it is well known how easily a rifle projectile can be made to act in this way), secondly, by making a ball of such original form as, without changing it, would inflict a torn wound. It is useless to give further examples. A technical officer could spend an indefinite time in suggesting designs of bullets, desperately cruel in their effects, which, forbidden by my amendment, would be permitted under the article as it comes from the Commission.

In fact they would not only be permitted, but one might be driven, in the effort to avoid the class specified by the article of the Commission, to the adoption of another less humane. If the shocking power of the bullet is to be increased at all, and we may be sure that if found necessary it will be done in one way or another, what more humane method can be imagined than to have it simply increase its size in a regular manner? But this is forbidden, and consequently there is great danger of some more cruel method coming into use, when there will not be a Conference ready to forbid it. There is always danger in attempting to cover a principle by the specification of details, for the latter can generally be avoided and the principle be thus violated.

It has been stated in the Commission that the language of my proposition is too vague, and that little would be left of the article voted if it were to be amended in accordance therewith. But in reality it is more restrictive than that of the Commission. For this last, instead of covering the principle, touches it at one point only. In the effort to catch a single detail of construction, it has left the door open to everything else which ingenuity may be able to suggest.

It has been squarely stated that the dum dum bullet is the one at which the prohibition is aimed.

I have no commission for the defense of the dum dum bullet, about [57] which I know nothing except what I have heard here. But we are asked to sit in judgment upon it, and for this purpose it would seem that some evidence is desirable.

None, however, has been presented up to the present.

Colonel GILINSKY, who, to his honor and that of his Government, has done here so much hard work in the cause of humanity, believes that two wars where this bullet was used, have shown it to be such as to inflict wounds of great cruelty. But no facts have been presented which might lead us to share this opinion.

The only alleged evidence of which we have heard at all is that of the Tübingen experiments and the asserted similarity of the bullet used therein with the dum dum. Now this the British delegate has himself been obliged to bring in, in order that he might deny it.

Let me call attention, however, to the fact that under the proposed amendment the dum dum bullet receives no license; on the contrary it falls under the prohibition, provided a case can be made out against it.

We are all animated with the common desire to prevent rather than to rail against the employment of weapons of useless cruelty. As for the efficiency of such prevention, I ask whether it would not be better to secure the support of domestic public opinion in a country by the presentation to its Government of a case, supported by evidence, against any military practice, than to risk arousing

a national sentiment in support of the practice by a condemnation of it without proof?

The Conference is now approaching an end, and this subject is the only one of actual practice upon which there is division.

The division is decided; it is even acute, and it operates to destroy all value of the action taken.

I therefore ask the delegates who may not have been convinced of the improvement in humane restrictiveness, which the article would acquire from the proposed amendment, to vote for it, in order that something tangible may be secured, instead of the nothing which would result from the *status quo*.

His Excellency Sir Julian Pauncefote supports the amendment of Captain CROZIER and agrees with the remarks that he has made.

Jonkheer van Karnebeek recalls what passed in the Commission on this subject. The amendment has already been presented by the American delegation in almost similar terms, but it had not found sufficient support, for the majority of the members of the Commission had been of opinion that, whatever was the humanitarian aim that inspired the motion concerned, the formula which expressed it was too vague and did not have sufficient range; it was for that reason that on the request of one of the members, priority had been given to the original text, which was voted unanimously with the exception of two votes.

His Excellency Sir Julian Pauncefote announces that his Government desires to make a very important declaration on the subject of dumdum bullets.

This declaration not having yet been transmitted, he asks that the minutes remain open for its insertion.

It is so decided.<sup>1</sup>

General den Beer Poortugael does not know whether it is the intention of the assembly to renew the discussion on the question of bullets; for his part, he thought that all that concerned this matter was settled; nevertheless, if they wished to return to it, he desired to remark that in his opinion, by admitting the CROZIER proposal, the work accomplished would be destroyed. He thinks, like Mr. CROZIER, that the general principle enters equally into his formula, but it has, he believes, insufficient range.

It is a question of a general statement of a necessary limit. Now what is understood by this necessary limit or by needlessly cruel wounds? We do not know; a criterion would be necessary in order to be able to determine it. We must be able to say: here is a bullet entirely different from that which has been adopted heretofore. There must be a specified limit and not a general limit. Otherwise, no result will be reached.

If Mr. CROZIER has said that we are here condemning the dumdum bullet, he is mistaken. It seems that it is very difficult to condemn in advance [58] a bullet that is not known. Action has been taken in a general way on the use of bullets with an envelope, whose envelope does not entirely

<sup>1</sup> This request was withdrawn by the following letter addressed by Sir JULIAN PAUNCEFOTE to the president of the Conference:

"Sir JULIAN PAUNCEFOTE presents his compliments to his Excellency the president of the Peace Conference, and has the honor to state that he has received instructions from his Government to the effect that, in view of the attitude of the plenary Conference at its sitting of the 21st instant, and of the vote taken on that occasion on the subject of projectiles, Her Majesty's Government will not avail themselves of the facilities accorded to them to insert a Declaration in the *procès-verbal* of that sitting."

The Hague, July 27, 1899.

cover the core or is pierced with incisions. Even this wording has been very difficult to light upon, and, in his opinion, it is indispensable to take up its details. On the other hand, he admits that in giving details there is risk of running counter to the general principle.

The formula of the Commission has done away with one means; that is already much, we can not do away with all those which perhaps will be invented in the future.

If we do not accept this formula we shall have done nothing.

Colonel **Gilinsky**, answering Mr. **CROZIER**, states first that the original Russian proposal does not mention dum dum bullets, although they have been spoken of in the course of the discussion. He reads the text of the proposal.

Other technical delegates have brought thereto some amendments, and the outcome has been the adoption of the formula which we find in the report. Nor does this formula mention the dum dum bullet. It will be, therefore, for each government to examine and decide whether any given projectile that is used or proposed, enters into the category covered by the formula.

Bullets of this kind inflict needlessly cruel wounds because the incision permits the lead to come out of the hard envelope and to expand; and not only do these projectiles wound, but they carry away bits of flesh. Such an effect goes beyond the aim of war which is merely to place *hors de combat*. The bullets of small calibre such as those of  $7\frac{1}{2}$  mm. whose effects he declares known, suffice to produce this result.

The contrary has indeed been contended, but the cases where these projectiles have been insufficient only constitute exceptions. They happen if the bullet touches only the muscles or soft parts of the body, and not the bone, which is comparatively rare. In that case, it may indeed happen that a man mortally wounded can still advance for a certain time and then fall dead, without knowing that he has been hit.

At St. Petersburg in 1868, something already in existence was under contemplation. It was desired to prohibit bullets which really existed.

We desire to do the same here: To prohibit the use of a certain category of bullets which have already been manufactured. We do not know what is going to be invented. The inventions of the future will perhaps render a new prohibition necessary.

It is not proper to make distinction between civilized and savage tribes. There is no objection to the term "needlessly cruel" being introduced in the formula, but with that exception it should remain untouched. This is the formula which has been adopted after mature deliberations in which all the technical experts have taken part, and it would be impossible for the Conference to reverse itself.

Captain **Crozier** states that in his opinion the formula presents three objections:

1. It does not prohibit bullets which exceed the allowed limits except in one case;

2. It prohibits bullets which expand. Now, it is quite possible that a bullet may be invented that expands uniformly and that consequently would not produce needlessly cruel wounds. It would not be necessary, then, to forbid its use.

3. The minutes state that the formula is intended to forbid the use of

the bullet called "dumdum," although that word is not mentioned in the text. Now, it is condemned without proof, for there has been no effort made to show that it is needlessly cruel. He reads in support of his words a passage from the report of General DEN BEER POORTUGAEL (page 3, paragraph 2), who himself speaks of dumdum bullets, and it has been stated on several occasions that those are the projectiles that it is sought to prohibit. He observes that so far as the United States is concerned, they employ a gun of 7½ mm. calibre.

They are satisfied with it and do not desire to change.

He says that, without the intention of its authors, the proposal of the Commission is rather a prohibition of a gun of small calibre than a prohibition of the use of an arm that is not humane, and he reads on this point a passage from the report of General DEN BEER POORTUGAEL (page 3, last paragraph), in which is found the remark of Colonel GILINSKY that the bullet of small calibre does not stop the attack of a civilized army, for such is the effect of the small calibre; that there is therefore an argument in favor of larger calibres; and that in diminishing continually the calibre, one arrives at a calibre too small and the necessity of using dumdum bullets. He remarks that from these words it may be seen that the prohibition of the class of bullets mentioned in the article and that of the gun of small calibre are so intimately united that one can scarcely be supported without at the same time and in spite of one's self, making arguments in favor of the other. Now the majority of Powers have declared themselves against limitation of calibre.

Answering Mr. VAN KARNEBEEK, Captain CROZIER recalls that when he presented his amendment to the subcommission that amendment was not put to vote. Action was limited to voting on the original proposal.

[59] This procedure has certainly had the advantage in hastening the dispatch of business, but in his opinion there is something more important to be done, to record the opinion of members on every question presented. Now the subcommission has not had an opportunity of expressing an opinion on his amendment, and it is for this reason that he recurs to it and asks that it now be put to vote before the main question.

Colonel Gilinsky repeats that the bullets covered by the formula of the Commission are known; their effects in two recent wars can be perfectly well stated, although there does not exist any official communications on the subject.

As to bullets which may be invented in the future, let them be taken up when the time comes.

Captain CROZIER has spoken of the eventual invention of bullets which expand uniformly. That supposition is admissible; but even bullets of that category may inflict wounds that are needlessly cruel.

The Russian formula has in view only bullets already known. As he has already stated, bullets of small calibre check in general an attack. If the present calibre is diminished further, perhaps the projectile will no longer have the same effect.

A new problem will then arise.

But if these bullets do not cause a shock and permit soldiers of exceptional bravery to advance, is it necessary to invent bullets that are more cruel, in order to combat these brave men?

Mr. CROZIER has said that there was not enough attention given the question in the subcommission, that action was taken too hastily. Two months were

taken up with it in the subcommission and the question was conscientiously studied in the Commission and the formula worked out in detail. It is necessary, then, not to act hastily now and change in one meeting the result of the work of two months.

Captain CROZIER asks precedence for his formula; but Mr. GILINSKY insists that it be given that of the Commission.

Jonkheer van **Karnebeek**, speaking from his experience in parliamentary law, says that Mr. CROZIER complains that his formula was not voted on first. Certainly, according to the rules, an amendment has priority over original motion.

However, here we are dealing not with an amendment, but with a new proposal. He recalls that Mr. BEERNAERT, whose high authority in parliamentary law cannot be questioned, has shown that he was of the same opinion as himself, in giving precedence to the original motion.

When two proposals are pending, parliamentary usage requires that preference be given to the formula that has the greatest scope.

If this assembly desires to depart from this principle, he sees in that no inconvenience, but, according to him, it would be incorrect to proceed in that way.

Captain Crozier insists that his formula constitutes an amendment. He explains that while putting it to vote first it is necessary to bear in mind that a second vote will be held on the proposition, amended or not amended as may be, and that the two votes together will place the opinion of every delegate definitely on record.

Mr. **Raffalovich** moves to put to vote the question of precedence.

Mr. **Bille** states that on the vote in the Commission for the original text, he did not intend to condemn dum-dum bullets, which are not familiar to him and whose cruel effects do not appear to him to be demonstrated.

His Excellency Mr. **White** regrets exceedingly that the delegation of the United States cannot agree with the Commission on this subject.

He begins by saying that he addresses the Conference without the least pretension of being considered an expert on the subject. He has not the slightest technical knowledge of projectiles or of arms of any kind; but he deems it proper to intervene in the debate to declare first that the Government of the United States has not made use up to the present time, does not make use now, and has not the intention of making use, of any other bullet than that used by other civilized nations. He then declares that the United States has not the intention to use in the future bullets which are not deemed permissible by the common agreement of the Powers.

After this preliminary statement, his Excellency Mr. **White** points out the weak point, as it seems to him, of the proposition of Colonel GILINSKY. This proposition in fixing in a special manner the details of construction of a projectile that produces needlessly cruel wounds, will supply to belligerents in the first prolonged war the opportunity of getting rid of this restriction or of twisting its stipulations.

Belligerents will be more anxious to conform to the letter of the prohibition than to avoid evils that it has been desired to combat by the proposition in question.

[60] In the United States, in a recent civil war which he regrets personally and which, thanks to God, is terminated, there was some experience with the

inefficacy of the modern bullet of small calibre. A case is recorded of a soldier who, although pierced by four bullets, continued to fight and to-day is in the best of health.

The proposal of the report would not prevent nations from changing the bullets at present in use or from making them still more cruel; this is a case in which the letter kills and the spirit gives life; the Conference will see whether it can condemn a special type of bullet without at the same time adopting the more extended principle of the CROZIER proposition. Mr. WHITE suggests, therefore, reference to the Commission, in order that the latter may find a formula to which the represented countries can adhere.

General **den Beer Poortugael** contends that the gun of small calibre is sufficient to stop the attack of the enemy. He cites a recent example taken from the Achin War.

Colonel **Gilinsky** deems it his duty to declare that he regrets that the United States cannot agree with the majority. He, too, has seen the last war and knows that bullets of  $7\frac{1}{2}$  mm. calibre had an effect sufficient to stop the attack very well.

He maintains that it is best to deal here with existing projectiles and not with future inventions that are at present unknown.

The examples cited by the American delegate do not appear to him conclusive; they are only exceptional cases which prove nothing. He could likewise recall that a general, General **DE GALLIFFET**, survived a serious wound in the stomach produced by the explosion of a shell. He had the courage and strength after he was wounded to reach the ambulance alone. Shall we conclude, then, that shells are innocuous?

He hopes that the Conference will have full confidence in the work of the Commission and will in this meeting definitely decide the question by adopting the formula accepted by the Commission.

Captain **Mahan** says that, if Colonel **GILINSKY** has contended that we ought to deal here only with existing projectiles, he must object that that argument has not been taken into account as respects points 1 and 2.

According to him, the question can be summed up as follows: In order to reach an end that we all approve, is it better to adopt a general principle or to vote on a few details that tend only toward a certain point?

Colonel **Gilinsky** answers that launching projectiles from balloons is an existing fact, since it is under study in England and in several other countries. As to bullets, the accepted formula has in view the general principle; prohibition of bullets which expand and flatten. But it is necessary to define the details that are well known, otherwise it would not be a formula but a phrase.

**Jonkheer van Karnebeek** repeats that a new proposition is here being dealt with.

He insists on this point and maintains categorically that it is in order to vote first on the original proposition.

Count **de Macedo** declares himself in favor of Mr. WHITE's proposal; he abstained from voting in the Commission because he did not have sufficient light on the question. Now, the declaration announced by Sir **JULIAN PAUNCEFOTE** might furnish some; in his opinion it is better then to wait.

The motion of His Excellency Mr. WHITE is put to vote.

The reference to the Commission is rejected by 20 votes to 5.

Voting for the reference: United States, Denmark, Great Britain, Greece, Portugal.

Luxemburg was not present.

The **President** suggests voting on the formula of the Commission.

General Sir **John Ardagh** and Captain **Crozier** protest.

Captain **Crozier** insists on priority being given his amendment in order to furnish the Commission an opportunity of placing itself on record on the subject.

The **President** declares that, in a conciliatory spirit, he is ready to have a vote first on the American formula.

His Excellency Sir **Julian Pauncefoot** remarks that in all European parliaments it is the rule to vote first on amendments. Now, the American and English delegations are agreed that the **CROZIER** formula is an amendment.

According to Mr. **Seth Low**, the American proposition is a subsequent proposition ("substitute"); it would be the rule in the American Congress to vote on it before the original motion, otherwise, the true sentiments of the majority would never be obtained.

[61] Count **de Macedo** declares that he will vote for the American proposal; but this vote will not signify that he disapproves the original proposal.

Mr. **Rolin** considers it impossible for the delegates who have voted on the regulation of the laws of war to place themselves on record as against the adoption of the **CROZIER** proposition which scarcely does more than repeat one of the provisions of those regulations; under these conditions he fears that the vote will give rise to misunderstanding and he asks that it be permitted him, in case the **CROZIER** proposition is adopted, to take up the proposition of the Commission as an additional amendment.

Mr. **Raffalovich** supports this proposal.

Colonel **Coanda** is of opinion that it would be better to vote first on the draft which views the humanitarian aim in a general way, and then on that of the formula which contains the details.

General **Mounier** remarks that many difficulties would be encountered by accepting the formula of Captain **CROZIER**. The formula of the Commission has in view bullets which are already known, whereas he does not positively know what kind of projectiles the American delegate wishes to prohibit.

Mr. **Bille** finds the expression "limit necessary to put a man *hors de combat*" sufficiently clear.

Jonkheer **van Karnebeek** is of opinion that it is for the Conference to settle the question by voting on priority.

Mr. **Beldiman** makes the same proposal.

The question of priority is put to vote.

The following eight states vote for the priority of the American formula: United States, Belgium, China, Denmark, Great Britain, Greece, Portugal and Serbia.

The other seventeen states vote against it.

Luxemburg did not take part in the vote.

Consequently, the formula of the report is put to vote and adopted unanimously with the exception of two votes (United States and Great Britain) and one abstention (Portugal). Luxemburg was not present.



Divisions II, III, and IV of the report are adopted unanimously.

A letter is read, addressed by the president of the drafting committee of the Red Cross subcommission, by which Admiral Sir JOHN FISHER brings to the knowledge of Mr. MARTENS that the American delegation has withdrawn the three additional articles that it had proposed to add to the ten articles voted by the Conference in the meeting of June 20.

Captain Mahan makes the following statement on this subject:

The delegation of the United States has directed me to say that the three additional articles proposed by it have been withdrawn, not because of a change of opinion on this subject of the propriety of providing for the cases to which they relate and which will doubtless arise, but in furtherance of their desire to facilitate the conclusion of the work of the Conference.

The delegation wishes it understood that it accepts only tentatively the ten articles, although it deems them materially defective in so far as they do not provide for the cases mentioned, and under reservation of the subsequent approval of its Government, to which it reserves full liberty of action. Moreover, it is understood that it will have to communicate to its Government without any restriction the doubts which it feels, while adding such comments as it may deem necessary.

The meeting adjourns.

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### Annex to the Minutes of the Sixth Meeting, July 21

#### REPORT TO THE CONFERENCE

It has been the work of the First Commission to examine the first four topics of the circular of his Excellency Count MOURAVIEFF. For the purpose of studying the second, third, and fourth questions, which relate to engines [62] of warfare, two subcommissions were formed, one for military matters, the other for naval; while the first topic of Count MOURAVIEFF, limitation of armaments, was reserved for the full Commission.

I. The labors of these two subcommissions have resulted in bringing out only three points which could secure an affirmative vote by the Commission in favor of international engagements:

1. A prohibition against launching projectiles and explosives from balloons, or by other new methods of similar nature.

This agreement, which is only for a term of five years, was adopted by a unanimous vote.

2. A prohibition of the use of projectiles, the sole object of which is the diffusion of asphyxiating or deleterious gases.

This lacked one vote of unanimity; but six of the affirmative votes were thus cast only on condition of unanimity.

3. A prohibition of the use of bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions.

The Commission, consequently, proposes to the Conference a Declaration or an agreement carrying an engagement on each of the three points mentioned. It is unanimous in favoring the first. As to the second, the vote taken in the Commission stood seventeen votes in favor (Germany, Austria-Hungary, Denmark, Spain, France, Italy, Japan [upon condition of unanimity], Montenegro, Netherlands, Portugal, Roumania, Russia, Serbia, Siam, Switzerland, Turkey, Bulgaria), against two (United States of America and Great Britain). It supports the third by a vote of sixteen (Germany, Austria-Hungary, Denmark, Spain, France, Italy, Japan, Montenegro, Netherlands, Roumania, Russia, Serbia, Siam, Switzerland, Turkey, Bulgaria), against two (United States of America and Great Britain). Portugal did not vote.

II. In view of the important bearing of these three topics on budgets, the two subcommissions spent a long time trying to reach some agreement to prevent, if only for a limited time, the introduction of new types and calibres of rifles and cannon; but the more or less detailed propositions discussed all encountered objections, partly based on the impossibility of obtaining before this Conference adjourns instructions sufficiently precise for decisions which would have practical value. Examination of the various proposals advanced has without exception shown that a determination of these questions cannot be had without a previous technical study in most of the countries, made with minuteness and based on tests.

Confronted by this difficulty, the Commission has had to confine itself to proposing to the Conference that it recommend to the Governments represented that they undertake, each in its own way, a study of this problem, especially with reference to rifles and naval guns, in order to find, if possible, a solution that would receive unanimous acceptance, and might be the subject of an engagement in a future Conference. Perhaps the debates recorded in the minutes of the two subcommissions may be of use in these studies.

This proposal received the unanimous vote of the Commission.

III. An examination no less conscientious has been given to the possibility of fixing the effective military and naval forces and also the military budgets pertaining to them.

Propositions to that end were submitted by Russia. The first proposed to fix for a term of five years the present number of troops maintained in each mother country, that is to say, colonial troops not being included, and to limit for the same period the military budgets to their totals at the present time.

This proposition was referred to the first subcommission, where it was first examined and discussed in a special technical committee composed of Colonel GROSS VON SCHWARZHOFF, Captain CROZIER, Lieutenant Colonel VON KHUEPACH, General MOUNIER, General Sir JOHN ARDAGH, General ZUCCARI, Colonel COANDA, Colonel GILINSKY, and Colonel BRÄNDSTRÖM. This committee after a thorough discussion reported that, with the exception of Colonel GILINSKY, they were unanimously of the opinion:

First, that it would be very difficult to fix, even for a term of five years, the number of effectives without regulating at the same time other factors of national defense;

Secondly, that it would be quite as difficult to regulate by an international

agreement the factors of this defense, as it is organized in every country upon a different principle.

[63] Hence, the committee expressed its regret that it could not advise acceptance of the proposition; but the majority of its members thought that a more thorough study of the question by the Governments themselves would be desirable.

In view of this report, the Commission, to its great regret, is able only to give explanation of the impossibility of arriving, in this Conference, at a positive and immediate agreement upon the subject of effective forces and military budgets, but it adds that it hopes that the Governments themselves will resume the study of the questions raised in the first topic of the circular of Count MOURAVIEFF.

The belief that from a general point of view it is nevertheless important to place a check upon military armaments and to urge that the solution of this question be given the most serious attention, was manifest in the Commission. Consequently, after it unanimously adopted the proposals of the technical committee, the Commission further adopted, also unanimously, to express this belief, a resolution proposed by the first delegate of France in the following terms:

The Commission is of opinion that the restriction of military charges, which are at present a heavy burden on the world, is extremely desirable for the increase of the material and moral welfare of mankind.

The Commission accordingly proposes that the Conference, too, adopt this resolution.

IV. The other Russian proposition had reference to naval armaments and suggested acceptance of the principle of fixing the total expenditures for a term of three years, leaving to each Government the liberty of fixing its budget at the point which seems to it desirable, but with an engagement that when this budget is fixed and communicated, it cannot be increased during the three-year period.

This proposition, too, met with difficulties in the subcommission charged with its examination. Besides such as would eventually present themselves in connection with the manner of putting such a project in execution, a serious obstacle was said to exist in countries with parliaments where the legislative assemblies have the right of voting the budgets.

However desirous the Commission may have been to proceed in the way pointed out by the Russian proposition, it was constrained to recognize the fact that it found itself unable to arrive at a solution of this problem, which is one that would require a thorough inquiry on the part of the various Governments if called upon to declare their positions through instructions; and for this the necessary time would be lacking during this Conference.

The Commission has therefore agreed to relegate this question, together with that concerning land forces, to the Governments, in order that the latter, if they deem it advisable, may in their study of these questions take into consideration the proposals which have here been made.

The Commission submits this idea for the approval of the Conference.

# SEVENTH MEETING

JULY 25, 1899

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His Excellency Mr. Staal presiding.

The meeting opens at 2:30 o'clock.

The **President** states that the minutes of the last meeting must remain open at the request of his Excellency Sir JULIAN PAUNCEFOTE who has announced that he would doubtless have an important declaration to be inserted therein.

The minutes therefore have not been printed and the **PRESIDENT** proposes, in order to gain time, to leave the care of approving them to the Bureau.<sup>1</sup>

He adds:

I seize this opportunity once more to thank the secretariat for the zeal it shows in the considerable work with which it is now charged, and I beg Mr. VAN

KARNEBEEK also to transmit the thanks of the Assembly to the National [64] Printing Office, whose director and force have a special claim to our gratitude. The rapid printing of the report of Chevalier DESCAMPS permitting us to meet to-day, has well shown the value of this collaboration. (*Applause.*)

We are arrived, gentlemen, almost at the end of our labors. I have first to request you to give your approval to the text of the articles adopted by the Third Commission for the pacific settlement of international disputes which Chevalier DESCAMPS is about to give you in its last reading.

The following articles, read by Chevalier DESCAMPS, are successively put to vote and adopted without discussion:

## PART I.—THE MAINTENANCE OF GENERAL PEACE

### ARTICLE 1

With a view to obviating, as far as possible, recourse to force in the relations between States, the signatory Powers agree to use their best efforts to ensure the pacific settlement of international differences.

## PART II.—GOOD OFFICES AND MEDIATION

### ARTICLE 2

In case of serious disagreement or dispute, before an appeal to arms, the signatory Powers agree to have recourse, as far as circumstances allow, to the good offices or mediation of one or more friendly Powers.

### ARTICLE 3

Independently of this recourse, the signatory Powers deem it expedient that one or more Powers, strangers to the dispute, should, on their own initiative, and as far as circumstances may allow, offer their good offices or mediation to the States at variance.

<sup>1</sup> See note, *ante*, p. 82, sixth meeting.

Powers strangers to the dispute have the right to offer good offices or mediation even during the course of hostilities.

The exercise of this right can never be regarded by either of the parties in dispute as an unfriendly act.

#### ARTICLE 4

The part of mediator consists in reconciling the opposing claims and appeasing the feelings of resentment which may have arisen between the States at variance.

#### ARTICLE 5

The functions of the mediator are at an end when once it is declared, either by one of the parties to the dispute, or by the mediator himself, that the means of reconciliation proposed by him are not accepted.

#### ARTICLE 6

Good offices and mediation, undertaken either at the request of the parties in dispute, or on the initiative of Powers strangers to the dispute, have exclusively the character of advice and never have binding force.

#### ARTICLE 7

The acceptance of mediation cannot, unless there be an agreement to the contrary, have the effect of interrupting, delaying, or hindering mobilization or other measures of preparation for war.

If it takes place after the commencement of hostilities, the military operations in progress are not interrupted, unless there be an agreement to the contrary.

#### ARTICLE 8

The signatory Powers are agreed in recommending the application, when circumstances allow, of special mediation in the following form:

In case of a serious difference endangering the peace, the States at variance choose respectively a Power, to which they entrust the mission of entering into direct communication with the Power chosen on the other side, with the object of preventing the rupture of pacific relations.

For the period of this mandate, the term of which, unless otherwise stipulated, cannot exceed thirty days, the States in dispute cease from all direct communication on the subject of the dispute, which is regarded as referred exclusively to the mediating Powers, which must use their best efforts to settle it.

In case of a definite rupture of pacific relations, these Powers are charged with the joint task of taking advantage of any opportunity to restore peace.

### PART III.—INTERNATIONAL COMMISSIONS OF INQUIRY

#### ARTICLE 9

In disputes of an international nature involving neither honor nor essential interests, and arising from a difference of opinion on points of fact, the signatory Powers deem it expedient that the parties, who have not been able to come to an agreement by means of diplomacy, should, as far as circumstances allow, institute an international commission of inquiry, to facilitate a solution of these disputes by elucidating the facts by means of an impartial and conscientious investigation.

## ARTICLE 10

The international commissions of inquiry are constituted by special agreement between [65] the parties in dispute.

The inquiry convention defines the facts to be examined and the extent of the powers of the commissioners.

It settles the procedure.

At the inquiry both sides must be heard.

The form and the periods to be observed, if not stated in the inquiry convention, are decided by the commission itself.

## ARTICLE 11

International commissions of inquiry are formed, unless otherwise stipulated, in the manner determined by Article 32 of the present Convention.

## ARTICLE 12

The Powers in dispute undertake to supply the international commission of inquiry, as fully as they may think possible, with all means and facilities necessary to enable it to become completely acquainted with and to accurately understand the facts in question.

## ARTICLE 13

The international commission of inquiry communicates its report to the Powers in dispute, signed by all the members of the commission.

## ARTICLE 14

The report of the international commission of inquiry is limited to a finding of facts, and has in no way the character of an award. It leaves to the Powers in dispute entire freedom as to the effect to be given to this finding.

## PART IV.—INTERNATIONAL ARBITRATION

CHAPTER I.—*The system of arbitration*

## ARTICLE 15

International arbitration has for its object the settlement of disputes between States by judges of their own choice, and on the basis of respect for law.

## ARTICLE 16

In questions of a legal nature, and especially in the interpretation or application of international conventions, arbitration is recognized by the signatory Powers as the most effective, and at the same time the most equitable, means of settling disputes which diplomacy has failed to settle.

## ARTICLE 17

The arbitration convention is concluded for questions already existing or for questions which may arise eventually.

It may embrace any dispute or only disputes of a certain category.

## ARTICLE 18

The arbitration convention implies an engagement to submit in good faith to the arbitral award.

## ARTICLE 19

Independently of general or private treaties expressly stipulating recourse to arbitration as obligatory on the signatory Powers, these Powers reserve to themselves the right of concluding, either before the ratification of the present act or later, new agreements, general or private, with a view to extending arbitration to all cases which they may consider it possible to submit to it.

CHAPTER II.—*The Permanent Court of Arbitration*

## ARTICLE 20

With the object of facilitating an immediate recourse to arbitration for international differences, which it has not been possible to settle by diplomacy, the signatory Powers undertake to organize a Permanent Court of Arbitration, accessible at all times and operating, unless otherwise stipulated by the parties, in accordance with the rules of procedure inserted in the present Convention.

## ARTICLE 21

The Permanent Court shall be competent for all arbitration cases, unless the parties agree to institute a special tribunal.

## ARTICLE 22

An International Bureau, established at The Hague, serves as registry for the Court. This Bureau is the channel for communications relative to the meetings of the Court. It has the custody of the archives and conducts all the administrative business.

The signatory Powers undertake to communicate to the International Bureau at The Hague a duly certified copy of any conditions of arbitration arrived at between them, and of any award concerning them delivered by a special tribunal.

They undertake likewise to communicate to the Bureau the laws, regulations, and documents eventually showing the execution of the awards given by the Court.

## ARTICLE 23

Within the three months following its ratification of the present act, each signatory [66] Power shall select four persons at the most, of known competency in questions of international law, of the highest moral reputation, and disposed to accept the duties of arbitrators.

The persons thus selected shall be inscribed, as members of the Court, in a list which shall be notified to all the signatory Powers by the Bureau.

Any alteration in the list of arbitrators is brought by the Bureau to the knowledge of the signatory Powers.

Two or more Powers may agree on the selection in common of one or more members.

The same person can be selected by different Powers.

The members of the Court are appointed for a term of six years. Their appointments can be renewed.

In case of the death or retirement of a member of the Court, his place is filled in the same way as he was appointed.

## ARTICLE 24

When the signatory Powers wish to have recourse to the Permanent Court for the settlement of a difference that has arisen between them, the arbitrators called upon to form the tribunal competent to decide this difference must be chosen from the general list of members of the Court.

Failing the composition of the arbitration tribunal by direct agreement of the parties, the following course is pursued:

Each party appoints two arbitrators, and these together choose an umpire.

If the votes are equally divided, the choice of the umpire is entrusted to a third Power, selected by the parties by common accord.

If an agreement is not arrived at on this subject, each party selects a different Power, and the choice of the umpire is made in concert by the Powers thus selected.

The tribunal being thus composed, the parties notify to the Bureau their determination to have recourse to the Court and the names of the arbitrators.

The tribunal of arbitration assembles on the date fixed by the parties.

The members of the Court, in the performance of their duties and out of their own country, enjoy diplomatic privileges and immunities.

#### ARTICLE 25

The tribunal of arbitration sits ordinarily at The Hague.

Except in cases of necessity, the place of session can only be altered by the tribunal with the assent of the parties.

#### ARTICLE 26

The International Bureau at The Hague is authorized to place its premises and staff at the disposal of the signatory Powers for the use of any special board of arbitration.

The jurisdiction of the Permanent Court may, within the conditions laid down in the regulations, be extended to disputes between non-signatory Powers, or between signatory Powers and non-signatory Powers, if the parties are agreed to have recourse to this tribunal.

#### ARTICLE 27

The signatory Powers consider it their duty, if a serious dispute threatens to break out between two or more of them, to remind these latter that the Permanent Court is open to them.

Consequently, they declare that the fact of reminding the parties at variance of the provisions of the present Convention, and the advice given to them, in the highest interests of peace, to have recourse to the Permanent Court, can only be regarded as in the nature of good offices.

#### ARTICLE 28

A Permanent Administrative Council, composed of the diplomatic representatives of the signatory Powers accredited to The Hague and of the Netherland Minister for Foreign Affairs, who will act as president, shall be instituted in this town as soon as possible after the ratification of the present act by at least nine Powers.

This Council will be charged with the establishment and organization of the International Bureau, which will be under its direction and control.

It will notify to the Powers the constitution of the Court and will provide for its installation.

It will settle its rules of procedure and all other necessary regulations.

It will decide all questions of administration which may arise with regard to the operations of the Court.

It will have entire control over the appointment, suspension or dismissal of the officials and employees of the Bureau.

[67] It will fix the payments and salaries, and control the general expenditure.

At meetings duly summoned the presence of five members is sufficient to render valid the discussions of the Council. The decisions are taken by a majority of votes.

The Council communicates to the signatory Powers without delay the regulations adopted by it. It addresses to them an annual report on the labors of the Court, the working of the administration, and the expenditure.



## ARTICLE 29

The expenses of the Bureau shall be borne by the signatory Powers in the proportion fixed for the International Bureau of the Universal Postal Union.

CHAPTER III.—*Arbitration Procedure*

## ARTICLE 30

With a view to encouraging the development of arbitration, the signatory Powers have agreed on the following rules, which shall be applicable to arbitration procedure unless other rules have been agreed on by the parties.

## ARTICLE 31

The Powers which have recourse to arbitration sign a special act (*compromis*) in which are clearly defined the subject of the dispute and the extent of the arbitrators' powers. This act implies an engagement of the parties to submit in good faith to the arbitral award.

## ARTICLE 32

The duties of arbitrator may be conferred on one arbitrator alone or on several arbitrators selected by the parties as they please, or chosen by them from the members of the Permanent Court of Arbitration established by the present act.

Failing the composition of the tribunal by direct agreement of the parties, the following course is pursued:

Each party appoints two arbitrators, and these together choose an umpire.

If the votes are equally divided, the choice of the umpire is entrusted to a third Power, selected by the parties by common accord.

If an agreement is not arrived at on this subject, each party selects a different Power, and the choice of the umpire is made in concert by the Powers thus selected.

## ARTICLE 33

When a sovereign or the chief of a State is chosen as arbitrator, the arbitration procedure is settled by him.

## ARTICLE 34

The umpire is *ex officio* president of the tribunal.

When the tribunal does not include an umpire, it appoints its own president.

## ARTICLE 35

In case of the death, retirement, or disability from any cause of one of the arbitrators, his place is filled in the same way as he was appointed.

## ARTICLE 36

The tribunal's place of session is selected by the parties. Failing this selection, the tribunal sits at The Hague.

The place thus fixed cannot, except in case of necessity, be altered by the tribunal without the assent of the parties.

## ARTICLE 37

The parties are entitled to appoint delegates or special agents to attend the tribunal to act as intermediaries between themselves and the tribunal.

They are further authorized to commit the defense of their rights and interests before the tribunal to counsel or advocates appointed by them for this purpose.

## ARTICLE 38

The tribunal decides on the choice of languages to be used by itself, and to be authorized for use before it.

## ARTICLE 39

As a general rule arbitration procedure comprises two distinct phases: pleadings and oral discussions.

The pleadings consist in the communication by the respective agents to the members of the tribunal and the opposite party of all printed or written acts and of all documents containing the grounds relied on in the case. This communication shall be made in the form and within the time fixed by the tribunal in accordance with Article 49.

The discussions consist in the oral development before the tribunal of the arguments of the parties.

## ARTICLE 40

Every document produced by one party must be communicated to the other party.

## ARTICLE 41

[68] The discussions are under the direction of the president.

They are only public if it be so decided by the tribunal, with the assent of the parties.

They are recorded in the minutes drawn up by the secretaries appointed by the president. These minutes alone have an authentic character.

## ARTICLE 42

After the close of the pleadings, the tribunal is entitled to refuse discussion of all new papers or documents which one of the parties may wish to submit to it without the consent of the other party.

## ARTICLE 43

The tribunal is free to take into consideration new papers or documents to which its attention may be drawn by the agents or counsel of the parties.

In this case, the tribunal has the right to require the production of these papers or documents, but is obliged to make them known to the opposite party.

## ARTICLE 44

The tribunal can, besides, require from the agents of the parties the production of all papers, and can demand all necessary explanations. In case of refusal, the tribunal takes note of it.

## ARTICLE 45

The agents and counsel of the parties are authorized to present orally to the tribunal all the arguments they may consider expedient in defense of their case.

## ARTICLE 46

They are entitled to raise objections and points. The decisions of the tribunal on these points are final, and cannot form the subject of any subsequent discussion.

## ARTICLE 47

The members of the tribunal are entitled to put questions to the agents and counsel of the parties, and to ask them for explanations on doubtful points.

Neither the questions put nor the remarks made by members of the tribunal in the course of the discussions can be regarded as an expression of opinion by the tribunal in general, or by its members in particular.

## ARTICLE 48

The tribunal is authorized to declare its competence in interpreting the *compromis* as well as the other treaties which may be invoked in the case, and in applying the principles of international law.

## ARTICLE 49

The tribunal is entitled to issue rules of procedure for the conduct of the case, to decide the forms and time in which each party must conclude its arguments, and to arrange all the formalities required for dealing with the evidence.

## ARTICLE 50

When the agents and counsel of the parties have submitted all the explanations and evidence in support of their case, the president pronounces the discussion closed.

## ARTICLE 51

The deliberations of the tribunal take place in private. Every decision is taken by a majority of members of the tribunal.

The refusal of a member to vote must be recorded in the minutes.

## ARTICLE 52

The award, given by a majority of votes, must state the reasons on which it is based. It is drawn up in writing and signed by each member of the tribunal.

Those members who are in the minority may record their dissent when signing.

## ARTICLE 53

The award is read out at a public sitting of the tribunal, the agents and counsel of the parties being present or duly summoned to attend.

## ARTICLE 54

The award, fully pronounced and notified to the agents of the parties at variance, settles the dispute definitively and without appeal.

## ARTICLE 55

The parties can reserve in the *compromis* the right to demand the revision of the award.

In this case, and unless there be an agreement to the contrary, the demand must be addressed to the tribunal which pronounced the award. It can only be made on the ground of the discovery of some new fact which is of a nature to exercise a decisive influence upon the award, and which, at the time the discussion was closed, was unknown to the tribunal and to the party demanding the revision.

Proceedings for revision can only be instituted by a decision of the tribunal expressly [69] recording the existence of the new fact, recognizing in it the character described in the preceding paragraph, and declaring the demand admissible on this ground.

The *compromis* fixes the period within which the demand for revision must be made.

## ARTICLE 56

The award is binding only on the parties who concluded the *compromis*.

When there is a question as to the interpretation of a convention to which Powers other than those in dispute are parties, the latter notify to the former the *compromis* they have concluded. Each of these Powers is entitled to intervene in the case. If one or more avail themselves of this right, the interpretation contained in the award is equally binding on them.

## ARTICLE 57

Each party pays its own expenses and an equal share of the expenses of the tribunal.

The Count de Macedo states that he has requested the floor simply to declare that he withdraws the reservations which he formulated at the meeting of June 20, last, on the occasion of the final vote taken on the ten articles concerning the application of the principles of the Geneva Convention to maritime wars; but that, since he has the honor of speaking before the Conference just after the unanimous approval of the fundamental part of the draft convention respecting mediation and arbitration, he will take the liberty of saying a few words for the purpose of expressing on this last subject a regret that is entirely personal and a sentiment of patriotic satisfaction. The regret arises from the fact that, by a combination of circumstances easily understood, in which, certainly, predominates the comparative personal inability of the speaker in this areopagus of eminent men, the Portuguese delegation has been able to take only a very small and modest part; that it has contributed little, save its vote and conciliatory attitude, towards the accomplishment of this truly important and essential part of the work of the Conference. The satisfaction has its origin in the sincere and patriotic conviction that nevertheless his country will have the right to claim a part, at least as important and influential as that belonging to any other nation represented in this high assembly, of the glory of this great work of humanity, of progress and of peace. For Portugal will have contributed to it, and in a greater degree than any other country, by example as by act, as he is about to demonstrate.

In reality, Portugal and Holland are up to the present the only countries who have concluded and *ratified* a convention, submitting to arbitration all differences between them with the single reservation of the questions touching the autonomy or the independence of one of the two nations. Count DE MACEDO thinks that he should still add, for it cannot be denied that such facts have a great suggestive value, that Portugal had in the last half century only five really important international differences, which she has been able to settle promptly and easily through simple, direct negotiations. In all these five cases, his country has invoked mediation or arbitration; he will abstain, through motives of propriety easily understood, from enumerating them, especially since that would be unnecessary before an assembly so enlightened; but he says that in two of these five cases in which an arrangement for arbitration was made, the arbiter ruled in favor of Portugal; in a third case where an eventual mediation has been accepted, such mere prefatory agreement led in a short time to settlement through direct and friendly negotiations. In the other two cases, those in which settlement by arbitration or even by mediation was not accepted, the differences were adjusted in a way entirely adverse to the Portuguese claims. These facts, well known, are by their *special circumstances* too suggestive for the Count DE MACEDO not to believe he has the right to consider them very influential. (*Applause.*)

The President then reads the following declaration:

The delegation of the United States of America on signing the Convention for the pacific settlement of international disputes, as proposed by the International Peace Conference, makes the following declaration:

Nothing contained in this Convention shall be so construed as to require the United States of America to depart from its traditional policy of not

intruding upon, interfering with, or entangling itself in the political questions or policy of international administration of any foreign State; nor shall anything in the said Convention be construed to imply a relinquishment by the United States of its traditional attitude toward purely American questions.

The PRESIDENT places on record this declaration of the delegation of the United States of America.

The draft is adopted in whole.

[70] The President says that before entering upon the next subject in the order of the day, he asks the Conference to unite with him in addressing their fullest thanks to the statesman who has presided over the work of the Third Commission.

We all (said he) have applauded his earnestness and eloquence; we all have sincerely admired the tact and impartiality with which he has guided the debates. As to our reporter, I shall say to him that his name will remain intimately bound up with the draft that you have just adopted. His report is a monument of knowledge and system and represents invaluable intellectual effort.

Let us thank also the committee of examination, its secretary, Baron d'ESTOURNELLES, and all its members, statesmen and jurists, who have facilitated our task and cleared the way before us. (*Great applause.*)

His Excellency **Turkhan Pasha** makes the following declaration:

The Turkish delegation, considering that the work of this Conference has been a work of high loyalty and humanity, destined solely to assure general peace by safeguarding the interests and the rights of each one, declares, in the name of its Government, that it adheres to the project just adopted, on the following conditions:

1. It is formally understood that recourse to good offices and mediation, to commissions of inquiry and arbitration is purely facultative and could not in any case assume an obligatory character or degenerate into intervention;

2. The Imperial Government itself will be the judge of the cases where its interests would permit it to admit these methods without its abstention or refusal to have recourse to them being considered by the signatory States as an unfriendly act.

It goes without saying that in no case could the means in question be applied to questions concerning interior regulation.

The declaration of His Excellency **TURKHAN PASHA** is recorded.

His Excellency **Sir Julian Pauncefote** asks to turn back to Article 53 of the Regulations adopted for the laws and customs of war. He recalls that, on the request of Mr. **BILLE**, shore ends of cables were added to the land telegraphs mentioned in this article. The British Government is of the opinion that if protection of telegraphic material on land may enter into the object of the deliberations of the Conference, the extension of the provision to cables that extend under the sea for a distance often considerable, would exceed the competence of this assembly from which it has been agreed to exclude naval matters.

**Sir Julian Pauncefote** hopes that, in a spirit of conciliation, Mr. **BILLE** will withdraw, with the approval of the Conference, the amendment that he had offered to Article 53.

**Mr. Bille** replies:

My Government will learn with regret that the first delegate of Great Britain is opposed to the amendment respecting shore ends of cables, adopted by the Conference and inserted in Article 53 of the draft convention relative to the laws and customs of war on land.

At the same time, but merely to avoid having this opposition and the reservation following it become at the last hour an obstacle to the unanimous acceptance of a draft convention which does honor to the Peace Conference and marks progress in the law of nations, I am authorized to withdraw the amendment in question and to declare at the same time that my Government does not remain less convinced of the justice of the existing reasons for giving submarine cables, and with still greater reason the shore ends of cables, the same protection in war as is assured to land telegraphs.

My Government takes note of the support that the Conference, by its former vote, has given to the principle involved; it recognizes that the exclusion of questions of maritime law necessarily prevented the question of submarine cables from being treated by this Conference as it deserves; it now confines itself to repeating its hope that this question will be taken into serious consideration by the Powers without delay.

The **President** states that on account of the declarations which have just been made, the text of Article 53 must be modified. He consults the Conference to ascertain whether it approves this modification as reached by agreement between **Sir Julian Pauncefote** and **Mr. Bille**.

**Mr. Bille** repeats that he has withdrawn his amendment, in the desire of leaving Article 53 unanimously agreed to. He adds that if anyone should feel obliged to take it up again, he would consider it his duty to align himself with the new motion.

The **President** asks if it is desired to vote by roll-call.

**Mr. Beldiman** says that he has favored the amendment presented by **Mr.**

**Bille** and that his Government was entirely favorable to it. He thinks, [71] however, that this is not the time to renew the discussion. Although of the same opinion as **Mr. Bille**, that there is an essential difference between submarine cables and that these latter alone fall under the law of maritime war, he will willingly give up the proposed amendment if this renunciation would bring about the adhesion of Great Britain to the whole of the Convention on the laws and customs of war.

His Excellency **Sir Julian Pauncefote** replies that he is not authorized to make a promise of this kind. He says that the amendment of **Mr. Bille** was the only objection that had so far been presented to him by his Government on the adopted regulations. He does not believe that other difficulties will be raised; but he can not make such an engagement as **Mr. Beldiman** asks.

**Mr. Martens** says that the agreement arrived at between **Sir Julian Pauncefote** and **Mr. Bille** gives a real hope of resulting in the unanimous signature of the Convention.

No one requesting the floor, the **President** says that the modification of Article 53, requested by the first delegate of Great Britain and accepted by the first delegate of Denmark, is adopted without vote.

The **President** gives the floor to **Mr. Renault** who presents an oral report on the work of the drafting committee of the Final Act.

Mr. RENAULT reminds the Conference that by its direction Messrs. ASSER, Chevalier DESCAMPS, SETH LOW, MARTENS, MÉREY VON KAPOS-MÉRE, his Excellency Count NIGRA, RENAULT, and Baron VON STENGEL met to decide conjointly upon the text of the Final Act, containing the result of the labors of the Conference. Upon the refusal of his Excellency Count NIGRA, who had been elected president of the committee, to serve, this office was filled by Mr. ASSER.

Mr. RENAULT has been charged to make an oral report on the resolutions of the committee. He hopes that the Conference will receive this extemporaneous report with indulgence.

The first question which came up was as to what designation should be given to the Final Act which is before the Conference.

Should it be called *Final Act*, *Protocol*, or *Procès-verbal*? The committee was of the opinion that the denomination "Final Act" would be more in keeping with the importance of the work of the Conference, and that title was decided upon.

As the aim of the Final Act was to state the results of the deliberations of the Conference, the query arose as to whether this document should bear the signatures of all the delegates who took part in the work, or only the names of the delegates plenipotentiary. It was believed that it was proper to mention in the preamble the names of all the delegates who took part in the work, and at the same time to conform to the custom that a diplomatic act should be signed only by plenipotentiaries, and the following text was adopted in this respect :

The International Peace Conference, convoked in the best interests of humanity by His Majesty the Emperor of All the Russias, assembled, on the invitation of the Government of Her Majesty the Queen of the Netherlands, in the Royal House in the Wood at The Hague, on May 18, 1899.

The Powers enumerated in the following list took part in the Conference, to which they appointed the delegates named below :

Here follows the enumeration of all the delegates appointed, whether plenipotentiary or not.

After which will come the following formula :

In a series of meetings, between May 18 and July 29, 1899, in which the constant desire of the delegates above mentioned has been to realize, in the fullest manner possible, the generous views of the august initiator of the Conference and the intentions of their Governments, the Conference has agreed, for submission for signature by the plenipotentiaries, on the text of the Conventions and Declarations enumerated below and annexed to the present Act.

This instrument indicates, therefore, that all the delegates have taken part in the work of the Conference, but that only the plenipotentiaries have the right to sign the Final Act.

[72] The Final Act next states that the Conference has adopted the text of three Conventions and three Declarations. It must be noted here that the signing of the Final Act is not equivalent to the signing of the Conventions and Declarations. The Final Act has no other purpose than to *state* that the Conference has reached such and such decisions, and that the plenipotentiaries may therefore sign it without in any way whatever binding their Governments in so far as the clauses of the Conventions and Declarations are concerned.

These latter, on the contrary, will not become binding until they have been signed, and they may even be signed by other plenipotentiaries than those who are here assembled. Moreover, they form so many separate acts, each one of which has its own force. Consequently, one State may sign them all, while another State may sign only some of them. It is therefore evident that the Final Act and the Conventions and Declarations may bear different signatures and a different number of signatures.

The question came up as to what date the Conventions and Declarations should bear. The ideal solution clearly would have been that all the States represented at the Conference might be in a position to sign all the acts at the same time and forthwith. As it is unfortunately probable that this will not be the case, an attempt has been made to form a link between the various signatures. It is to be supposed that several States will sign the Conventions at the same time that they sign the Final Act. The Conventions and Declarations will therefore be given the same date as the Final Act, and these Conventions and Declarations, bearing this uniform date, will remain open for signature until December 31, 1899.

After January 1, 1900, conditions will change and the States which have not signed must, if they desire so to do, avail themselves of the adhesion or accession clause, which will be found in each Convention or Declaration, and give notice of such adhesion or accession in the form provided.

It is therefore understood that States, even though represented at the Conference, will fall under the common law, unless they sign before December 31 of this year.

The Final Act contains an enumeration of the Conventions and Declarations in the following form:

- I. Convention for the pacific settlement of international disputes.
- II. Convention respecting the laws and customs of war on land.
- III. Convention for the adaptation to maritime warfare of the principles of the Geneva Convention of August 22, 1864.
- IV. Three Declarations:
  1. To prohibit the discharge of projectiles and explosives from balloons, or by other similar new methods.
  2. To prohibit the use of projectiles, the only object of which is the diffusion of asphyxiating or deleterious gases.
  3. To prohibit the use of bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions.

These Conventions and Declarations shall form so many separate acts. These acts shall be dated this day, and may be signed up to December 31, 1899, by the plenipotentiaries of the Powers represented at the International Peace Conference at The Hague.

It will be noted that the title of the third of these Declarations above has been completed by the addition of the clause "such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions." The object of restoring the entire formula in the text was to satisfy certain doubts which had arisen as to the advisability of the abbreviation which was made at first. This is not therefore a modification of the subject matter which changes the character of the provision.

Mr. RENAULT points out further that it was not thought wise to mention the votes upon the Conventions and Declarations. The reason for this is that the



Final Act states only that they were adopted and in no way implies that they were approved. It appeared inadvisable therefore to mention whether the Con-  
[73] ventions and Declarations received a unanimous vote or not. The Powers have at their disposal a very simple means of showing their approval or disapproval—by signing or not signing.

The Final Act next contains a resolution, which was unanimously adopted upon the proposal of the first delegate of France. It is presented in the following form:

Guided by the same sentiments, the Conference has adopted unanimously the following resolution:

The Conference is of opinion that the restriction of military charges, which are at present a heavy burden on the world, is extremely desirable for the increase of the material and moral welfare of mankind.

The Final Act then takes up the *vœux*. Mr. RENAULT points out, in passing, that a *vœu* does not bind the Governments, but that it is nevertheless important in the sense that it implies their approval of the idea which prompted this *vœu*. It is therefore necessary in mentioning the *vœux*, and to show the sincerity of the act, to specify whether they received a unanimous vote or what majority they obtained.

The Final Act presents the *vœux* in this form:

It has, besides, uttered the following *vœux*:

1. The Conference, taking into consideration the preliminary steps taken by the Swiss Federal Government for the revision of the Geneva Convention, utters the *vœu* that steps may shortly be taken for the assembly of a special Conference having for its object the revision of that Convention.

This *vœu* was voted unanimously.

2. The Conference utters the *vœu* that the question of the rights and duties of neutrals may be inserted in the program of a Conference in the near future.

3. The Conference utters the *vœu* that the questions with regard to rifles and naval guns, as considered by it, may be studied by the Governments with the object of coming to an agreement respecting the employment of new types and calibres.

4. The Conference utters the *vœu* that the Governments, taking into consideration the proposals made at the Conference, may examine the possibility of an agreement as to the limitation of armed forces by land and sea, and of war budgets.

5. The Conference utters the *vœu* that the proposal which contemplates the declaration of the inviolability of private property in naval warfare may be referred to a subsequent Conference for consideration.

6. The Conference utters the *vœu* that the proposal to settle the question of the bombardment of ports, towns, and villages by a naval force may be referred to a subsequent Conference for consideration.

The last five *vœux* were voted unanimously, saving some abstentions.

Finally, the Final Act ends with the following formula:

In faith of which, the plenipotentiaries have signed the present Act, and have affixed their seals thereto.

Done at The Hague, July 29, 1899, in a single original, which shall be deposited in the Ministry of Foreign Affairs, and copies of which, duly certified, shall be delivered to all the Powers represented at the Conference.

Mr. RENAULT, in concluding, reminds the Conference of the fact that, at the request of Baron BILDT, the words "States" or "Governments" were replaced

in this last clause, as well as in the second paragraph of the preamble which [74] follows the Declarations, by the word "Powers."

The **President** thanks Mr. **RENAULT**, in the name of the Conference, for the very complete and clear report that he has just presented. (*Unanimous applause.*)

His Excellency Sir **Julian Pauncefote** observes that the last five *væux* reproduced in the Final Act are represented as having been voted unanimously with a few abstentions. The first delegate of Great Britain has not found in the minutes of the meeting any mention of his personal abstention in the vote on those *væux* which are numbered 2, 3, 5 and 6. He, therefore, deems it expedient to renew to-day this declaration of abstention which he desires to see placed in the current minutes.

The **President** says that this shall be done.

Mr. **Odier** recalls that he declared in the subcommission that he had not been authorized to accept the *væu* presented by his Excellency Mr. **EYSCHEN** relative to the reference to a subsequent Conference of the question of the rights and duties of neutrals. He believes he should renew this declaration here with the request that it be inserted in the minutes.

The **President** has the declaration of Mr. **ODIER** recorded.

The Final Act is reread *in extenso* by Mr. **Raffalovich**.

Baron **Bildt** recalls that, at his special request, the words *States or Governments* have been, in pages 1, 8, and 10 of the Final Act, replaced by the word *Powers*.

The Final Act is adopted in its entirety without further remarks.

His Excellency Count **Nigra** speaks as follows:

Gentlemen: The work of the Conference being nearly at an end, I take the liberty of drawing your attention to the considerable work accomplished by the printing office that has printed our documents and debates.

I do not speak now of the beauty of the paper nor of the elegance of the type. That is a merit of the Dutch Government and we are not surprised thereat. It is furthermore an old tradition of the country of beautiful books and beautiful engravings. So that does not astonish us either. I speak here of the work of the printers and their chiefs.

In my long career I have been present at many conferences and other diplomatic meetings. Never have I been present at a miracle of printing work such as that which has been offered to us here.

The mass of prints which have been distributed among us is truly enormous. There are documents which it has been necessary to print five, six, ten times and more and which have necessitated constant work by day and night. The diligence and rapidity with which this work has been accomplished deserves the greatest praise. Not only do they prove the self-denial, already familiar to us, of our secretariat, but they do the greatest honor to the directing force and personnel of the printing office.

The multiplicity of the prints of the same document testifies to the conscientiousness that we have brought to our task, but at the same time it testifies to their patience.

It can be said that the chiefs and workmen of our printing office have been, in some measure, our collaborators. That is the best praise that we can give them.

I propose to the Conference that it recognize this and unite in this praise. (*Applause.*)

Jonkheer van Karnebeek thanks Mr. STAAL and Count NIGRA for the words of praise that they have bestowed on the personnel of the Government Printing Office of the Netherlands, and assures them that the workmen of that establishment will greatly appreciate them.

The meeting adjourns.

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[75]      **Annex to the Minutes of the Seventh Meeting, July 25**

**REPORT TO THE CONFERENCE**

The message of His Majesty the Emperor of Russia invites nations to unite their efforts for the "maintenance of general peace." He recalls the fact that "the preservation of peace has been set up as the purpose of international politics." He asserts that "that high purpose is in accord with the most vital interests and most legitimate desires of all Powers."

Mediation and arbitration belong especially to those institutions which tend to the strengthening and establishment of peace.

The circular of his Excellency Count MOURAVIEFF, Minister of Foreign Affairs of Russia, dated December 30, 1898, and that of his Excellency Mr. DE BEAUFORT, Minister of Foreign Affairs of the Netherlands, dated April 6, 1899, placed these subjects upon the program of the Conference. His Excellency Mr. STAAL set forth their importance in his speech upon opening the work of this high assembly. The committee,<sup>1</sup> to which was entrusted the duty of submitting them to a preliminary examination, has attempted to prepare the way for an international agreement containing in some measure, in the words of the hope expressed in the imperial message, "a united sanction of the principles of equity and right upon which rest the security of States and the well-being of nations."

It has put the results of its labors into the draft of an international agreement which was presented to the Third Commission before being proposed to the Conference.

The committee thought that the name "Convention for the pacific settlement of international disputes" might be given to the international agreement worked out by it.

<sup>1</sup> At the session of May 26, 1899, the Third Commission designated as members of the committee of examination: Messrs. ASSER, Chevalier DESCAMPS, Baron d'ESTOURNELLES DE CONSTANT, HOLLS, LAMMASCH, MARTENS, ODIER, and ZORN. Chevalier DESCAMPS was appointed president and reporter of the committee, and Baron d'ESTOURNELLES DE CONSTANT, secretary. Mr. BOURGEOIS, president, and their Excellencies Count NIGRA and Sir JULIAN PAUNCEFOTE, honorary presidents of the Third Commission, participated in the work of the committee, as well as his Excellency Mr. STAAL, the president, and Jonkheer VAN KARNEBEEK, the vice president of the Conference. Mr. BOURGEOIS and Chevalier DESCAMPS fulfilled the duties of president. Mr. JAROUSSE DE SILLAC, Attaché of Embassy, acted as assistant secretary.

This agreement contains four parts :

- I. The maintenance of general peace.
- II. Good offices and mediation.
- III. International commissions of inquiry.
- IV. International arbitration.

This last part contains the three chapters on the system of arbitration, on the Permanent Court of Arbitration, and on arbitration procedure.

The Convention contains, finally, several general provisions concerning ratifications, adhesions, and denunciations.

In the examination of the numerous questions which have come to its attention, the committee followed the general order clearly indicated at the beginning of our labors by Mr. LÉON BOURGEOIS, president of the Third Commission.

Good offices and mediation naturally formed the first chapter for our deliberations. The committee studied them, taking as the starting-point of its work the remarkable draft communicated to the Conference by the Russian delegation, bearing this title: "Outlines for the preparation of a draft convention to be concluded between the Powers taking part in the Hague Conference." Several new provisions have been added to this preliminary draft, and the arrangement of the articles has had to be modified.

## CONCERNING THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES

### PREAMBLE

The preamble of the Convention for the pacific settlement of international disputes has been accepted as formulated by the author of this report [76] at the request of the General Drafting Committee,<sup>1</sup> except for the substitution in the fifth paragraph of the expression "tribunal of arbitration accessible to all" instead of the words "free tribunal."

Here is the preamble:

Animated by a strong desire to work for the maintenance of general peace;

Resolved to promote by their best efforts the friendly settlement of international disputes;

Recognizing the solidarity uniting the members of the society of civilized nations;

Desirous of extending the empire of law, and of strengthening the appreciation of international justice;

Convinced that the permanent institution of a tribunal of arbitration, accessible to all, in the midst of the independent Powers, will contribute effectively to this result;

Having regard to the advantages attending the general and regular organization of the procedure of arbitration;

Sharing the opinion of the august initiator of the International Peace Conference that it is expedient to record in an international agreement the principles of equity and right on which are based the security of States and the welfare of peoples;

<sup>1</sup> The General Drafting Committee was composed of Messrs. ASSER, president, Chevalier DESCAMPS, MARTENS, MÉREY VON KAPOV-MÉRE, his Excellency Count NIGRA, SETH LOW, Baron von STENGEL, and RAFFALOVICH, secretary. Jonkheer ROCHUSSEN fulfilled the duties of assistant secretary.

Being desirous of concluding a Convention to this effect, have appointed as their plenipotentiaries, etc.

### PART I.—*The maintenance of general peace*

#### ARTICLE 1

With a view to obviating, as far as possible, recourse to force in the relations between States, the signatory Powers agree to use their best efforts to ensure the pacific settlement of international differences.

This article is general in scope. It tends to ensure peace. The Powers therein affirm their common desire to prevent, as far as possible, recourse to force in international relations, and they agree to employ every effort to ensure the peaceful settlement of international differences. A spirit of reciprocal good feeling and friendly understanding cannot fail to inspire the Powers in the accomplishment of this work. Furthermore, it is left to them to decide how much cooperation they consider themselves able to render in bringing about the desired result without implying from such cooperation a special agreement by one Power with another.

The committee, upon a remark made by Count DE MACEDO, decided that reasons existed for giving the greatest scope to the provisions of Article 1. The substitution of the words "international differences" for the more special provision "conflicts which may arise between the signatory Powers" is in accord with that intention.

### PART II.—*Good offices and mediation*

#### ARTICLE 2

In case of serious disagreement or dispute, before an appeal to arms, the signatory Powers agree to have recourse, as far as circumstances allow, to the good offices or mediation of one or more friendly Powers.

The use of good offices and mediation finds its general justification in the ties which bind the members of an international society composed of civilized States one with the other, in the extreme nature of armed warfare as a means of solving international difficulties, in the general interest which exists in the maintenance of peace. The far-reaching differences which may produce modern wars in the relations among all States make still more necessary, in our day, the use of good offices and mediation, whether it be to prevent, or to mitigate, armed conflicts.

Good offices can be distinguished in certain respects from mediation. Practically, these methods are distinguished less by their nature than by their greater or less concern with the sphere of friendly relations. Often, too, one follows the other, and the third Power which has established negotiations between disputing States is also named to take part in these negotiations and sometimes to conduct them. Diplomatic documents do not insist upon this distinction. The present Convention provides for friendly intervention in its twofold form.

[77] From the very fact that good offices and mediation assume the character of tactful intervention and are within the sphere of friendly conciliation, they offer the double advantage of leaving the independence of the States to which they are addressed absolutely intact, and lending themselves not only to the settlement of legal disputes, but also to the accommodation of conflicting interests. In

these two ways they can place at the service of international peace the most varied resources for settlements.

The conclusion must not be drawn from that, that their application is endorsed without restriction. The natural sphere of good offices and mediation is that of serious differences which endanger the maintenance of peaceful relations. Beyond that, their use might constitute unreasonable interference, not without danger.

Article 2 describes in the following manner the international differences wherein the Powers bind themselves to resort to good offices and mediation: "in case of serious disagreement or dispute . . . before an appeal to arms."

International practice notes numerous cases where the tactful intervention of a third Power has produced happy results. The use of good offices or mediation was the subject of special agreements in Article 8 of the Treaty of Paris, March 30, 1856, and in Articles 11 and 12 of the General Act of the Conference of Berlin, February 26, 1885. Recourse to this method of adjusting international difficulties formed the subject of a *van* of general scope in the 23rd protocol of the Congress of Paris in 1856. International conventions form a firm and substantial basis for the most important progress. The principle of prior mediation, written into some international agreements as a *van* or as a special obligation, may be all the more legitimately followed to-day when it appears as an application by the Powers to themselves of the Convention which unites them as to the methods to be used to ensure the peaceful settlement of international disputes.

Should the agreement in the contract between the Powers be qualified? Will not reservations be of such a nature as to weaken an obligation which has no sanction behind it? In the committee Mr. ASSER, delegate from the Netherlands, particularly brought out this point.

But it has been observed—and by President LÉON BOURGEOIS among the first—that we were dealing with a provision the varying applications of which could with difficulty be measured in advance. It may be wise not to expose the execution of such a provision to resistance of such a character as to shake the authority of the entire Convention.

Among the qualifications which it was deemed were practically necessary, several formulas were offered, one after the other. Two of them emphasized especially the exceptional nature of the cases in which such recourse might be declined. "Unless the exceptional circumstances render this method manifestly impossible of application," said one. "Unless the exceptional circumstances are not in conflict therewith," was another. The Russian draft, reproducing the reservation accepted in 1856, provided: "So far as circumstances admit." The text finally adopted, at the suggestion of his Excellency Sir JULIAN PAUNCEFOTE, reads: "So far as circumstances allow." This qualification has been accepted as being in accord with practical necessities, without, however, being considered contrary to the ideas which inspired the former phraseology.

### ARTICLE 3

Independently of this recourse, the signatory Powers deem it expedient that one or more Powers, strangers to the dispute, should, on their own initiative, and as far as circumstances may allow, offer their good offices or mediation to the States at variance.

Powers strangers to the dispute have the right to offer good offices or mediation, even during the course of hostilities.

The exercise of this right can never be regarded by either of the parties in dispute as an unfriendly act.

This article deals with a leading point: the offer of good offices and mediation. This offer may, in certain cases, be considered as the fulfilment of a service due to humanity, or of a duty belonging, under certain conditions, to the society of civilized States. It is to be noted that the remarkable provisions of Article 27 are inspired by this last consideration.

As to the power to offer good offices, it is a right founded upon the freedom of States, and, in many cases, blends with their right to guard their own interests and their property as members of the peaceful society of nations. In order to find a check upon this right we should not contest its existence, but consider the corresponding right to refuse offers which may be made.

This power should be safeguarded at any event. Mr. VELJKOVITCH, in [78] order the better to establish this point, proposed to place the offer of good offices and the "refusal to accept" on an equal footing in the Convention, expressly declaring at the same time that the latter may never be considered an unfriendly act. While recognizing the justice of this view, the Commission considered that there was no reason to emphasize such a contingency to this extent.

If we consider the difficulties which may present themselves to disputing States when endeavoring to agree to resort to some mediator, we shall appreciate the importance of a spontaneous offer of friendly intervention as a means of preventing armed conflicts.

Unhappily, this offer itself is often so surrounded by obstacles, that the States most sincerely moved by a desire to unite in the preservation of peace are led to take refuge in complete inaction. Under these conditions, it is very important to establish beforehand, in the name of all and without idle verbiage, the fact that courageous and honorable attempts to prevent armed struggles between States are useful. Good intentions will be less restricted, fears will be in some measure allayed, and the general interests of peace will be the first to profit by a general and clearer definition of this matter.

Here again a practical limitation is added to the general provision. The reservation "as far as circumstances may allow" indicates clearly that it is not a matter of giving free rein to methods which might not be marked with prudence, opportuneness, and a just appreciation of events and a sincere desire for peace.

At the end of the first paragraph of Article 3 the Serbian delegation desired to replace the words "Powers at variance" with the words "Powers between which a serious dispute has arisen which might lead to a breach of peaceful relations." The Commission satisfied this suggestion by stating that Article 3 has in view, in effect, the same situation as Article 2, so far as the character of the difference giving rise to good offices and mediation is concerned.

The Russian draft dealt principally with the offer of good offices and mediation as a means of preventing armed conflicts. An additional provision, introduced by his Excellency Count NIGRA, insists upon the right of friendly intervention, even during the course of hostilities. At the same time it attaches to the exercise of mediation the character not only of a useful method, but of a measure "which can never be regarded by one or the other of the parties in dispute as an unfriendly act." The first delegate from Italy pointed out, and not without reason, the importance of this last provision as a guaranty given in

advance to the Powers who may be moved by the desire to exercise their power of intervention without possible apprehension.

#### ARTICLE 4

The part of the mediator consists in reconciling the opposing claims and appeasing the feelings of resentment which may have arisen between the States at variance.

Article 4 intends to set forth in a general way the character of the mediator. It summarizes this in two words "reconciliation and appeasement." Reconciliation of the opposing claims, appeasing the feelings of resentment to which the conflict may have given rise.

#### ARTICLE 5

The functions of the mediator are at an end when once it is declared, either by one of the parties to the dispute, or by the mediator himself, that the means of reconciliation proposed by him are not accepted.

The mission of the mediator may be crowned with success: in that case there is no difficulty to be feared. Having in view a different outcome, it is not unimportant to fix the period when the mediator is discharged from the task which he has assumed. From this point of view Article 5 declares that "the functions of the mediator are at an end when once it is declared, either by one of the parties to the dispute, or by the mediator himself, that the means of reconciliation proposed by him are not accepted."

#### ARTICLE 6

Good offices and mediation, undertaken either at the request of the parties in dispute, or on the initiative of Powers strangers to the dispute, have exclusively the character of advice and never have binding force.

Article 6 insists upon the essential characteristic of good offices and mediation. This characteristic is that of simple advice.

Mediation is not arbitration: the arbitrator is a judge and renders a binding decision.

Mediation is not intervention by authority, whether in the internal affairs of a State or in its foreign relations.

[79] What is called "armed mediation" is not mediation. These two terms mediation and coercion are contradictory.

Nations cannot deduce from the provisions of the present Convention concerning good offices and mediation any right whatever to exercise supremacy, to impose their individual or collective will by obligation or constraint. The sphere of mediation is and should remain the sphere of advice, offered or requested in a friendly way, freely accepted or declined.

#### ARTICLE 7

The acceptance of mediation cannot, unless there be an agreement to the contrary, have the effect of interrupting, delaying, or hindering mobilization or other measures of preparation for war.

If it takes place after the commencement of hostilities, the military operations in progress are not interrupted, unless there be an agreement to the contrary.



Article 7 deals with the effects of mediation after it has been accepted. Due to the suggestion of his Excellency Count NIGRA, the article is inspired by the desire to facilitate the acceptance of mediation by making the immediate consequences thereof in certain respects less dangerous. If the acceptance of mediation should imply, before the opening of hostilities, suspension of preparations for military action, and after the opening of hostilities, suspension of the operations of war, certain Powers would be little disposed to pursue this course. The great military Powers especially would not consent to tie up their actions at this point. It is desirable to smooth the pathway for the acceptance of mediation which shall be free from too burdensome and too dangerous consequences, and, with this in mind, to sacrifice what seems desirable as a temporary result to that which should be desired as a final result.

The Powers in controversy are also free to attach to the acceptance of mediation, if they deem it expedient, more far-reaching consequences than ordinarily follow. The words "unless there be an agreement to the contrary" clearly call attention to this right. Under these conditions the proposition of the first delegate of Italy appeared to be of such a nature as to meet all exigencies and to provide for all possibilities.

#### ARTICLE 8

The signatory Powers are agreed in recommending the application, when circumstances allow, of special mediation in the following form:

In case of a serious difference endangering the peace, the States at variance choose respectively a Power, to which they entrust the mission of entering into direct communication with the Power chosen on the other side, with the object of preventing the rupture of pacific relations.

For the period of this mandate, the term of which, unless otherwise stipulated, cannot exceed thirty days, the States in dispute cease from all direct communication on the subject of the dispute, which is regarded as referred exclusively to the mediating Powers, which must use their best efforts to settle it.

In case of a definite rupture of pacific relations, these Powers are charged with the joint task of taking advantage of any opportunity to restore peace.

Article 8 was proposed by Mr. HOLLS, delegate from the Government of the United States of America. It concerns mediation of a particular character which may be very productive of successful results. The committee, in giving it a separate place among the proposed provisions, has intended to preserve the form particularly suited to it, and to recommend it especially in those cases where circumstances will permit of its application. It deals with mediation exercised by common agreement by several Powers chosen respectively by the disputing States as their witnesses or champions, with a view to a peaceful settlement.

The proposition of the delegate of the United States of America rests upon this practical observation, that on the eve of a meeting which is believed to be fateful, instead of leaving debate open to the parties in controversy, it is preferable for the moment to surrender the discussion of the disputed points to witnesses or seconds who respectively possess the confidence of each party, and are less disposed to give way to passion.

"Mediation by common agreement" offers the great advantage of doing away with the necessity of an agreement, sometimes very difficult to reach, as to the choice of a common mediator.

Besides it introduces into the proceedings between nations in dispute another preliminary step. The author of this proposition observed on this point that there may be circumstances where one State feels obliged to say to its adversary, "One step farther means war." It would be much better for it to say under these circumstances, "One step farther and I shall be obliged to name a second." The interests of peace have everything to gain by the adoption of such procedure.

The exercise of mediation in this form requires the fixing of a period during which the disputing parties cease to communicate directly concerning the [80] matter in dispute. Article 8 provides for this exigency in the following manner: "For the period of this mandate, the term of which, unless otherwise stipulated, cannot exceed thirty days, the parties cease from all direct exchange of communication on the subject of the dispute, this subject being regarded as referred to the Powers exercising mediation jointly. These Powers must use their best efforts to settle it."

Article 8 contemplates, in short—and this point is important—the practical breach of peaceful relations, and it provides that the Powers invested with the authority of mediator "are charged with the joint task of taking advantage of any opportunity to restore peace."

Here is a collection of provisions whose underlying principle seems happily suited to the maintenance and prompt reestablishment of peaceful relations between States.

It was expressly understood, after a question by Mr. D'ORNELLAS DE VASCONCELLOS, that Article 7, concerning the effects of mediation, is applicable to special mediation as provided for in Article 8.

It was also agreed, after remarks by the author of this report, that certain States may find themselves, in disputes of certain kinds, in a peculiar position on the question of the selection of mediators and arbitrators. For instance, Belgium would be in this position as regards Powers guaranteeing her independence, when disputes concerning her independence, territorial integrity, neutrality, as well as the other provisions of the treaty of April 15, 1839, arose.

Mr. MIYATOVITCH requested that note be made of the following declaration:

In the name of the Royal Government of Serbia, we have the honor to declare that our adoption of the principle of good offices and mediation does not imply a recognition of the right of third States to use these means except with the extreme caution which proceedings of this delicate nature require.

We do not accept good offices and mediation except on condition that their character as purely friendly advice is fully and completely maintained, and we never could accept them in such forms and under such circumstances as would endow them with the character of intervention.

### PART III.—*International commissions of inquiry*

#### ARTICLE 9

In disputes of an international nature involving neither honor nor essential interests, and arising from a difference of opinion on points of fact, the signatory Powers deem it expedient that the parties, who have not been able to come to an agreement by means of diplomacy, should, as far as circumstances allow, institute an international commission of inquiry, to facilitate a solution of these disputes by elucidating the facts by means of an impartial and conscientious investigation.

The question of the formation of international commissions of inquiry has been considered by the committee to be of great importance to the object sought by this Conference. The advantages of the formation of similar commissions have been particularly set forth by Mr. MARTENS.

The eminent delegate from Russia called our attention to the fact that international commissions of inquiry are not an innovation. They have already proved the value of their services when a conflict breaks out between two States, each acting in good faith; for example, if a question concerning frontiers arises between them, opinion becomes inflamed in proportion as the incident is unexpected and public opinion lacks information with regard to it, because opinion is ignorant of the origin and real causes of the conflict. Opinion is at the mercy of momentary impressions and there are many opportunities under these circumstances to irritate the spirits and embitter the disagreement. That is why we desired to provide for the possibility of a commission having for its purpose, first and above all, the search for, and the publishing of, the truth as to the causes of the incident and as to the materiality of the facts. That is the principal business of the commission: it is the principal rôle of the commission: it is named to make a report, and not to make decisions which might bind the parties.

But while it is working to make its report, time is gained, and that is the second object we have in view. Spirits grow calmer, and the conflict is no longer acute.

Now this double and important practical result cannot be obtained except on one condition, and that is that the interested Governments shall both agree to take upon themselves the mutual obligation to name these commissions, with the reservation, of course, that no attack shall be made on vital questions, nor on the honor of the States in question.

The obligatory nature of the institution of commissions of inquiry has been the subject of some apprehension, of which Mr. LAMMASCH, delegate [81] from Austria-Hungary, acted as spokesman before the committee. He proposed, therefore, to characterize this institution as useful and even to recommend it, but to leave recourse thereto optional. At first this point of view did not prevail at all. The committee decided upon the principle of obligation, accompanied by this qualification: "so far as circumstances allow."

As a result of this, Article 9, as originally adopted by the committee, included two classes of reservations: one concerning the case where the honor or indeed the vital interests of the interested Powers might be involved, the other leaving to these same Powers the power of deciding whether the circumstances permitted the formation of international commissions of inquiry.

Here is the text of this article:

In disputes of an international nature arising from a difference of opinion regarding facts which may form the object of local determination, and besides involving neither the honor nor vital interests of the interested Powers, these Powers, in case they cannot come to an agreement by the ordinary means of diplomacy, agree to have recourse, so far as circumstances allow, to the institution of international commissions of inquiry, in order to elucidate at once, by means of an impartial and conscientious investigation, all the facts.

The institution of international commissions of inquiry was vigorously opposed in the commission by the delegation from Roumania. It was repre-

sented by Mr. BELDIMAN to be an innovation contrary to the sovereignty of States and presenting many dangers, especially in view of the obligatory character—in tendency at least—which might be attached to it.

The delegation from Serbia, without appearing hostile to the institution itself, called attention, in its turn, to all the inconveniences which the commissions might bring about, being in some respects a foreign organization acting upon national soil; and as a source of inequality of treatment between the large and small States.

The delegation from Greece, in its turn, drew up reservations, expressing the hope that an understanding agreeable to all might be reached.

The delegation from Bulgaria, without admitting that international commissions of inquiry were an innovation, expressed the opinion that these commissions should be of a more voluntary character.

Mr. ROLIN, delegate from Siam, made a declaration in the name of his Government regarding the extent of the agreements which the latter intends to assume concerning international commissions of inquiry, and concluding with these words:

We believe that arbitration should normally follow inquiry, in default of an immediate agreement.

It is with this conviction that we have just declared that the Siamese Government will doubtless be led to consider the agreement having in view a possible arbitration or, in other words, the prior conclusion of a *compromis*, as the principal condition on which it could consent to the entry of an international commission of inquiry into its territory to inquire into disputed facts.

In the course of a long discussion in which Messrs. BELDIMAN and VELJKOVITCH took part on one side, and Mr. MARTENS, Chevalier DESCAMPS, his Excellency Mr. EYSCHEN, Messrs. ZORN, ASSER, and STANCIOFF took the other side, the omission of Articles 9 to 13 was demanded by the former.

His Excellency Mr. EYSCHEN proposed, on his side, to add to the guaranties contained in these articles new guaranties analogous to those which exist for arbitral procedure.

These various propositions were sent to the committee for examination. The latter adopted a new form for Article 9, as follows:

In disputes of an international nature arising from a difference of opinion regarding facts, the signatory Powers deem it expedient, to facilitate the solution of these disputes, that the parties who have not been able to come to an agreement by means of diplomacy, should institute international commissions of inquiry in order to elucidate all the facts by means of an impartial and conscientious investigation.

The committee thought that the voluntary character given to these commissions by this article rendered needless the reservations contained in the preceding text.

It believed, too, that these words, "which may form the object of local determination," applied to the facts upon which the commissions of inquiry are called to act, were neither absolutely exact nor always applicable. At the request of Mr. ASSER, it proposed to omit these, as well as the words "at once" near the end of the article.

At a session of the commission held at the close of the meeting of the committee, the delegations of Serbia and Greece declared themselves ready to adhere to the provisions proposed by the committee.

[82] The delegation from Roumania proposed on its part a new draft of Article 9 in the following terms:

In disputes of an international nature involving neither honor nor essential interests, and arising from a difference of opinion on points of fact, the signatory Powers deem it expedient that the parties, who have not been able to come to an agreement by means of diplomacy, should, as far as circumstances allow, institute an international commission of inquiry, to facilitate a solution of these disputes by elucidating the facts by means of an impartial and conscientious investigation.

This article restores to the new text the two modifications inserted in the original text. It substitutes the words "essential interests" for the words "vital interests."

The commission finally agreed to this as a form reached by agreement and giving general satisfaction.

As for the proposition of his Excellency Mr. EYSCHEN, as developed and made more definite, it was adopted and forms Article 10 of the Convention. We reproduce it under this latter article.

#### ARTICLE 10

The international commissions of inquiry are constituted by special agreement between the parties in dispute.

The inquiry convention defines the facts to be examined and the extent of the powers of the commissioners.

It settles the procedure.

At the inquiry both sides must be heard.

The form and the periods to be observed, if not stated in the inquiry convention, are decided by the commission itself.

This additional article, introduced by his Excellency Mr. EYSCHEN, was inspired by the desire to protect the operation of international commissions of inquiry. It was first proposed to the commission in the following language:

Where there are not special provisions, the procedure for inquiry shall be determined by the principles contained in the rules in Articles 30 *et seq.* relating to arbitration procedure, so far as these principles are applicable to the institution of international commissions of inquiry.

At the session of the committee to which the examination of this article was referred, his Excellency Mr. EYSCHEN summarized as follows the guaranties which he thought it important to establish:

1. The agreement instituting the inquiry shall state exactly the facts to be examined (enumeration of facts);

2. Procedure shall be after hearing both parties (the adverse party should be advised of all opposing statements);

3. The commission shall determine the form and the periods to be observed.

His Excellency Count NIGRA insisted that the necessary special agreement should be mentioned, like the *compromis* in arbitration.

The final text was consequently redrawn as follows:

The international commissions of inquiry are constituted by special agreement between the parties in dispute.

The inquiry convention defines the facts to be examined and the extent of the powers of the commissioners.

It settles the procedure.

At the inquiry both sides must be heard.

The form and the periods to be observed, if not stated in the inquiry convention, are decided by the commission itself.

This provision was unanimously adopted by the committee.

#### ARTICLE 11

International commissions of inquiry are formed, unless otherwise stipulated, in the manner determined by Article 32 of the present Convention.

Article 15 of the Russian project provided a mode of nomination of the members of the commission of inquiry similar to that provided by the arbitral code for the nomination of the members of the arbitral tribunals.

The committee thought it was advantageous simply to refer here to Article 32 of the present Convention, recalling the fact that this article is applicable only in case the parties have not adopted by common agreement another method of constituting the commission.

Mr. HOLLS, delegate of the United States of America, set forth, in this connection, the inconveniences which might arise in forming the commission [83] of members belonging to the interested States, giving only the deciding voice to a neutral president. The presence of three neutral commissioners would, he believed, give greater authority to the results of the commission's work.

#### ARTICLE 12

The Powers in dispute undertake to supply the international commission of inquiry, as fully as they may think possible, with all means and facilities necessary to enable it to become completely acquainted with and to accurately understand the facts in question.

Certain apprehensions were expressed in the committee with regard to Article 16 of the Russian draft, corresponding to Article 12 of the committee's draft. The obligation provided by this article certainly cannot include the obligation of a Power to furnish information which might endanger its own security. In order to prevent too rigid an interpretation, the committee modified the general agreement contained in Article 16 by this qualification: "as fully as they may think possible."

The phraseology of this qualification is borrowed from Article 31 of the General Act of the Brussels Conference, July 2, 1890.

#### ARTICLE 13

The international commission of inquiry communicates its report to the Powers in dispute, signed by all the members of the commission.

This article corresponds to Article 17 of the Russian draft. It indicates clearly the nature of the work within the jurisdiction of the commission. The

latter is limited to the statement of the positive results of its inquiry into the facts, embodied in a report signed by all of its members.

#### ARTICLE 14

The report of the international commission of inquiry is limited to a finding of facts, and has in no way the character of an award. It leaves to the Powers in dispute entire freedom as to the effect to be given to this finding.

This article was adopted at first by the committee as a reproduction of Article 18 of the Russian draft, except for a twofold modification.

The possible recourse to mediation was noted along with the ultimate recourse to arbitration.

The following words, placed at the end of the article, "whether to resort finally to means accepted in intercourse between nations," were omitted at the suggestion of Baron d'ESTOURNELLES DE CONSTANT. The committee thought that these last words contained a special and explicit reservation of the right to resort to war, a reservation which it seems useless to make in the act of a Peace Conference. It appears from the explanation given by Mr. MARTENS that the Russian delegation had in mind only certain methods compatible with a state of peace and, being of this character, authorized by the law of nations. The committee, however, persisted in preferring the draft which it had decided upon.

The articles relating to commissions of inquiry having been referred back for a reexamination by this committee, following the discussion in the commission, Mr. STANCIOFF proposed to redraft the second part of the final article of this title as follows:

The report of the international commission of inquiry leaves to the Governments in controversy entire freedom, either to conclude a friendly settlement based upon this report, or to consider the report as never having been made.

The committee thought it unnecessary to state thus strongly a right which was not contested. It agreed to the following proposition of Mr. ODIER:

The report of the international commission of inquiry is limited to a finding of facts, and has in no way the character of an award. It leaves to the Powers in dispute entire freedom as to the effect to be given to this finding.

#### PART IV.—*International arbitration*

Humanity, in its constant evolution, daily tends in increasing measure to place respect for the law as the foundation of its existence. The society of civilized nations recognizes the existence of legal principles and rules set to a common standard—international law. Under the requirements of this law each State retains its autonomy, in accordance with its primary and unchangeable inclination to live its own life, according to its own idea, on its own territory, by the activity of its people, by means of its own resources, with a view to increasing its moral and material well-being and assuring its legitimate growth in all things. But at the same time, it recognizes that it is bound to the other States in the international community.

[84] The farther law progresses, and the more it enters into the society of nations, the more clearly arbitration appears woven into the structure of that society.

As a principle for the pacific and judicial solution of international differences it is presented to us as an instrument suited to ensure the rights of each, while safeguarding the dignity of all.

A voluntary system of jurisprudence in origin as well as in jurisdiction, it agrees with the just demands of sovereignty, of which it is only an enlightened exercise. For, if there is no power superior to the States which can force a judge upon them, there is nothing to oppose their selection of an arbitrator by common agreement to settle their disputes, thus preferring a less imperfect means of securing justice to a method more problematical and more burdensome.

## CHAPTER I.—*The system of arbitration*

### ARTICLE 15

International arbitration has for its object the settlement of disputes between States by judges of their own choice, and on the basis of respect for law.

International arbitration does not aspire to supplant direct negotiation: it is applicable to disputes which could not be settled by diplomatic means.

Furthermore it does not prevent mediation; by the very fact that the latter can proceed on the basis of conciliation and compromise, it possesses resources for settlement which arbitration does not have.

Among all methods for the settlement of differences between States arbitration occupies a distinct position and preserves its own character.

Article 15 concisely describes this position and character.

International arbitration settles—that is to say, decides finally—international disputes which are submitted to it.

It settles these disputes on the basis of respect for law, according to the demands of justice.

It settles them by means of judges chosen by virtue of the agreement of the States themselves.

Such are the fundamental features of arbitration.

### ARTICLE 16

In questions of a legal nature, and especially in the interpretation or application of international conventions, arbitration is recognized by the signatory Powers as the most effective, and at the same time the most equitable, means of settling disputes which diplomacy has failed to settle.

Article 16 determines the nature of controversies which are within the proper jurisdiction of arbitration. These are questions of a legal nature and principally questions of the interpretation or application of treaties. It is not difficult to perceive the bond which unites the institution of arbitration with the safeguarding of the principle of good faith in international agreements.

To say that the arbitrator is judge and acts according to law is to say that arbitration is not applicable to every variety of dispute between States. Differences where the opposing claims of the parties cannot be stated as legal propositions are thus, to some extent, by their very nature, outside of the jurisdiction of an institution called upon to "speak the law." Conflicting interests, differences of a political nature, do not belong, properly speaking, to arbitration.

But for differences which have the character of disputes as to questions of



law, and which cannot be settled through the ordinary diplomatic channels, Article 16 recognizes that arbitration is the surest and most equitable method of arriving at a peaceful solution. It is the most effective because it settles the disputed question finally. It is the most equitable, because it renders to each what is justly due to it.

Article 16, however, does not go beyond that general recognition. It does not contain the positive agreement of a given Power, confronting some other, to refer a given dispute to arbitration. Under the provisions of the present Convention each State decides in its sovereign capacity, from its own view-point, whether this or that case shall be submitted to arbitration—under the restriction imposed by obligations which it may have contracted by other treaties.

Such is the scope of Article 16.

Mr. BELDIMAN requested note to be made of the following declaration:

The Royal Government of Roumania, being completely in favor of the principle of voluntary arbitration, of which it appreciates the great importance in international relations, nevertheless does not intend to assume, [85] by Article 15 (Article 16 here), an obligation to accept arbitration in every case there provided for, and it believes it ought to state express reservations upon this point.

It cannot therefore vote for this article except under that reservation.

#### ARTICLE 17

The arbitration convention is concluded for questions already existing or for questions which may arise eventually.

It may embrace any dispute or only disputes of a certain category.

Article 17 contains no agreement on the part of the Powers, but it determines in a convenient manner what the agreement to arbitrate may contain.

The agreement to arbitrate may be concluded after the origin of one or more disputes in order to secure the judicial settlement thereof. Properly speaking it is the *compromis*.

It may deal also with possible disputes, that is to say, simply with those which may arise in the future. That is the clause providing for the making of a *compromis*.

The validity of such a provision is not admitted in national law by all positive legislation; jurisprudence is not everywhere settled upon this point. In international law, it would seem impossible for doubt to exist. The agreement to enter into a *compromis* does not create an institution to compete with official tribunals; it creates an organic institution of justice itself, in a sphere where this institution is lacking.

The agreement to enter into a *compromis* may be special and contemplate one or several particular classes of disputes out of all the disputes of a legal character among States. The theory of this class of stipulations is worth noting. States are endeavoring to protect themselves against their own passions in the future, adopting the method of peaceful solution before the birth of controversies, and providing in advance in certain classes of their relations for peace based upon a treaty.

The agreement to enter into a *compromis* may also be general: it then embraces all, or at least almost all, disputes between States. It is a general treaty of arbitration, a real organic contract for a judicial peace, positive sanction of

arbitration as the proper, normal mode, accepted in advance, for the settlement of international disputes.

The present status of positive international law, from the point of view of the different ways in which the contract for arbitration has been extended, is characterized by the following features:

1. Increasing growth in the number of *compromis* applying arbitration to disputes which have already arisen. The treaty law of England and the United States offers us the most numerous cases where *compromis* have been concluded for such disputes.

2. Increase of provisions for entering into *compromis* covering particular classes, more or less numerous, of disputes which may arise in the future. We have endeavored to enumerate these provisions in a "General survey of the clauses of mediation and arbitration" made at the request of the Third Commission of the Conference. The greater number of these clauses belong to the law of special treaties between two States. Some of them are common to all Powers or to a considerable group of them, like the provision for entering into a *compromis* contained in the convention known as the "Universal Postal Union."

3. The conclusion of certain conventions extending the provision for entering into a *compromis*, either to all controversies without exception between States, or to all these disputes, with a necessary qualification with respect to that class of disputes which States do not believe they can submit to the possibilities of arbitration.

The declaration between the Netherlands and Portugal dated July 5, 1894, contains a provision for entering into a *compromis* with reservation. It is drawn up in these words:

All questions or all differences concerning the interpretation or execution of the present declaration and also every other question which may arise between the two countries, provided that it does not concern their independence nor autonomy, if it cannot be settled in a friendly manner, shall be submitted to the decision of two arbitrators, one of whom shall be named by each of the two Governments. In case of difference of opinion between the two arbitrators, they shall designate by common agreement a third who shall decide.

The treaty of arbitration between Italy and the Argentine Republic, dated July 23, 1898, contains a provision for the making of *compromis* without reservation. It is as follows:

#### ARTICLE 1

The high contracting Parties bind themselves to submit to arbitral decision all disputes, whatever may be their nature and cause, which may arise between the said parties, if they have not been able to settle them in a friendly manner by direct diplomatic negotiation. The arbitral clause extends even to disputes which may have arisen prior to the stipulation of the said treaty.

Among the general provisions for arbitration negotiated between Powers represented at the Conference, but as yet existing in tentative form only, [86] it is important to note the draft adopted by the Swiss Federal Council, July 24, 1883, and presented to the Government of the United States;

the draft worked out by the Pan American Conference which began in Washington on October 2, 1889, and closed April 19, 1890; the draft treaty between the United States and Great Britain, signed at Washington, April 11, 1897.

These various documents have often been referred to in the course of the discussions.

At the time of the deliberations in the Commission concerning Article 17, Mr. BELDIMAN asked that the following declaration be noted in the minutes:

The Royal Government of Roumania declares that it is unable to adhere to Article 16 (Article 17 here) except under the express reservation noted in the *procès-verbal*, that it is determined not to accept in any case an international arbitration of disputes and differences arising prior to the conclusion of the present convention.

#### ARTICLE 18

The arbitration convention implies an engagement to submit in good faith to the arbitral award.

In arbitration the disputing States by agreement refer the settlement of their disputes to the judgment of one or several persons endowed with the power of "stating the law" for the parties to the cause.

The obligation to submit in good faith to the arbitral decision is, under these conditions, a positive obligation implied in the convention entered into. An arbitration is not an attempt at conciliation. The characteristic feature of arbitration is, to be exact, the common submission by the States to a judge of their choice, with the agreement, which naturally flows therefrom, to carry out the sentence loyally. In the absence of special provisions in the *compromis* attaching some particular effect or other to an arbitral decision, and except for the use of legitimate methods of appeal, the failure to carry out the decision of the arbitrators is no more permissible in law than the violation of contracts, and this for the very reason that it is in fact the violation of a contract.

The original draft of Article 18 was as follows:

The arbitration convention contains an engagement to submit in good faith to the arbitral award.

The word "implies" substituted for the word "contains" at the suggestion of Mr. ROLIN, clearly accentuates from our point of view the character and consequences of the agreement to arbitrate.

#### ARTICLE 19

Independently of general or private treaties expressly stipulating recourse to arbitration as obligatory on the signatory Powers, these Powers reserve to themselves the right of concluding, either before the ratification of the present act or later, new agreements, general or private, with a view to extending arbitration to all cases which they may consider it possible to submit to it.

This article replaces Articles 8-12 of the draft proposed by the Russian delegation. This draft, accepted in its principal features, at first reserved entirely questions of law touching the vital interests or national honor of the parties in controversy.

As for other controversies, it divided them into two classes. One, composed

of two subdivisions only, of clearly specified controversies, was made the subject of obligatory arbitration. The other—and this by far the larger—was given over to voluntary arbitration, with a recommendation, however, that arbitration be used.

In a notable explanatory note the Russian delegation justified the system presented by it in the following manner:

It cannot be doubted that in international life differences often arise which may absolutely and at all times be submitted to arbitration for solution: these are questions which concern exclusively special points of law and which do not touch upon the vital interests or national honor of States. We do not desire that the Peace Conference should, so far as these questions are concerned, set up arbitration as the permanent and obligatory method.

The recognition of the obligatory character of arbitration, were it only within the most restricted limits, would strengthen legal principles in relations between nations, would guarantee them against infractions and encroachments, it would *neutralize*, so to speak, more or less, large fields of international law. For the States, obligatory arbitration would be a convenient means of avoiding the misunderstandings, so numerous, so troublesome, although of little importance, which sometimes fetter diplomatic relations without any reason therefor. Thanks to obligatory arbitration, States could more easily maintain their legitimate claims, and what is more important still, could more easily escape from the unjustified demands.

Obligatory arbitration would be of invaluable service to the cause of universal peace. It is very evident that the questions of the second [87] class, to which alone this method is exclusively applicable, very rarely form a basis for war. Nevertheless, frequent disputes between States, even though with regard only to questions of the second class, while not forming a direct menace to the maintenance of peace, nevertheless disturb the friendly relations between States and create an atmosphere of distrust and hostility in which some incident or other, like a chance spark, may more easily cause war to burst forth. Obligatory arbitration, resulting in absolving the interested States from all responsibility for any solution of the difference existing between them, seems to be fitted to contribute to the maintenance of friendly relations, and in that way to facilitate the peaceful settlement of the most serious conflicts which may arise within the field of their most important mutual interests.

At the same time that they outlined in this way the lofty sphere of obligatory arbitration, the authors of the project recognized the necessity of determining, with precision and care, the field within which this arbitration could be applied.

In this work they decided upon two classes of international controversies:

1. Pecuniary claims to recover for unlawful injuries.

The history of international relations proves without doubt that in the great majority of cases demands for damages by way of indemnity are the very cases which have been the subject of arbitration. . . . It goes without saying that in exceptional cases where the pecuniary question involved assumes a position of first importance as regards the interests of the State—for example, in a case concerning the bankruptcy of a State—each Power, invoking national honor or vital interests, has the power to decline arbitration as a means of deciding the dispute.

2. The interpretation or application of certain international conventions which have not a political character, and, above all, of treaties known as "universal unions."

Since treaties, as a general rule, are only *artificial settlements of opposing interests*, treaties of a universal character always express necessarily the agreement upon *common and identic* interests. That is the reason that within the scope of these treaties serious disputes incapable of settlement, or conflicts of a national character in which the interests of one are absolutely opposed to those of another, never arise and cannot arise. So far as momentary misunderstandings are concerned—concerning their interpretation, each State will willingly confide the solution to an arbitral tribunal, it being understood that all the Powers have an equal interest in maintaining the treaties in question, which serve as bases for extensive and complex systems of international institutions and regulations which are the only means of serving vital and permanent needs.

It should be noticed that the first attempt to introduce obligatory arbitration into international practice was in fact made in a treaty of a universal character, that relating to the Postal Union of 1874: Article 16 of this treaty establishes obligatory arbitration for the solution of all the differences arising with reference to the interpretation and application of the treaty in question.

The Hague Conference would seem therefore to be perfectly justified in extending the provisions of Article 16 of the treaty of Berne to all treaties of a universal character, which are entirely analogous to this one.

The general system proposed by the Russian delegation having been approved by the committee, the latter gave itself up to a detailed examination of Article 10 of the advance draft presented by this delegation.

With regard to pecuniary claims, the committee examined the question whether it was suitable to limit the requirement of obligatory arbitration either to claims not exceeding a certain sum for indemnity—a provision which is found in the Anglo-American draft treaty—or to cases where the principle of indemnity is recognized by the parties. This last guaranty was provisionally adopted.

In dealing with conventions the interpretation or application of which should be eventually submitted to obligatory arbitration, the committee could not secure a unanimous vote for the retention of monetary conventions and conventions relative to the navigation of international rivers and interoceanic canals. Consequently, these treaties were provisionally laid aside. Treaties regarding civil procedure and providing for free assistance by both parties to the indigent sick were added to the original list. Commercial treaties and the Geneva Convention, the addition of which was also proposed, met a less favorable fate. The other treaties first mentioned were retained.

The text of Article 10 as amended is as follows:

Arbitration is obligatory between the high contracting Powers in the following cases, so far as they do not concern the vital interests or national honor of the States in controversy:

[88] I. In case of disputes concerning the interpretation or application of the conventions enumerated herein:

1. Postal, telephone, and telegraph conventions.
2. Conventions concerning the protection of submarine cables.
3. Conventions concerning railroads.

4. Conventions and regulations concerning means of preventing collisions of vessels at sea.
5. Conventions concerning the protection of literary and artistic works.
6. Conventions concerning the protection of industrial property (patents, trade-marks, and trade-names).
7. Conventions concerning the system of weights and measures.
8. Conventions concerning reciprocal free assistance to the indigent sick.
9. Sanitary conventions, conventions concerning epizooty, phylloxera, and other similar scourges.
10. Conventions concerning civil procedure.
11. Extradition conventions.
12. Conventions for delimiting boundaries so far as they touch upon purely technical and non-political questions.

II. In the case of disputes concerning pecuniary claims for damages when the principle of indemnity is recognized by the Parties.

Articles 8-12 of the Russian draft were adopted as a whole with these conditions, except for final drafting. Upon the second reading, a request was made for the omission of Article 10 by Dr. ZORN, German delegate, who declared that his Government, without desiring to modify those conventions which at the present time sanction obligatory arbitration, does not believe that experience to-day is sufficient to justify a more general and immediate development of these conventions. He added that a too rapid introduction of obligatory arbitration into international law might present more dangers than advantages from the point of view of peace among nations. A new Russian proposition tending to sanction obligatory arbitration for cases only on which agreement had been reached by previous conventions, and to recommend specially recourse to arbitration for the other cases mentioned in the list previously adopted, brought forth objections of various kinds and was unable to secure general support. In this situation, and without finally binding themselves, the members of the committee deemed it desirable to adopt in place of Articles 8-12 of the Russian draft, a single article containing a twofold provision.

The first calls attention to the general treaties and the special treaties which already provide an obligation on the part of the signatory Powers to resort to arbitration.

The second is a declaration by which the Powers reserve the right to conclude, either before the ratification of the present treaty, or afterward, new agreements, general or special, with a view to extending obligatory arbitration to all cases which they deem possible of submission thereto. It is important, in short, to note that if agreement to a considerable extension of the sphere of obligatory arbitration cannot be reached, all the Powers retain the greatest freedom for the realization of their ideals in this matter, not only by means of special treaties between two States, but by means of conventions of as universal a character as possible. The future therefore remains largely open for the realization of all progress in this respect, a realization which will be due entirely to voluntary action, too, as was declared by Messrs. BELDIMAN and VELJKOVITCH.

All the members of the committee recognized the fact that the vote cast under these circumstances was in the nature of a compromise, inspired by the

desire to secure unanimous agreement to the propositions to be presented to the Commission.

## CHAPTER II.—*The Permanent Court of Arbitration*

No project was welcomed with more sympathy than that for the establishment of a Permanent Court of Arbitration. The suggestion made by his Excellency Sir JULIAN PAUNCEFOTE for this purpose was brilliantly presented at the opening of our sessions.

To recall at this point this memorable and fruitful suggestion is but to fulfil a duty to justice and to indicate at the same time the general field of our work upon this subject.

At the session of May 26, 1899, his Excellency Sir JULIAN PAUNCEFOTE made the following remarks:

[89] Mr. President, permit me to ask, before going further in this matter, whether it would not be useful and opportune to sound the Commission upon the subject of the most important question—as I believe—which you mentioned in your address, the establishment of an international Permanent Court of Arbitration.

Many codes of arbitration and rules of procedure have been made, but procedure has been regulated up to the present by the arbitrators and by special or general treaties.

Now, it seems to me that new codes and rules of arbitration, whatever may be their merit, do not advance very much the great cause which brings us here.

If we desire to take a step in advance, I believe that it is absolutely necessary to organize a permanent international tribunal which can assemble instantly at the request of contesting nations. This idea established, I believe that we shall not have very much difficulty in coming to an understanding upon the details. The necessity for such a tribunal and the advantages which it would offer, as well as the encouragement and even impetus which it would give to the cause of arbitration, have been set forth with vigor and clearness—and equal eloquence—by our distinguished colleague, Mr. DESCAMPS, in his interesting "Essay upon Arbitration," an extract from which appears among the acts and documents so graciously furnished the Conference by the Netherland Government. There is nothing left for me to say upon this subject, therefore, and I would be grateful, Mr. President, if, before proceeding further, you would consent to gather the ideas and sentiments of the Commission upon the proposition which I have the honor to submit to you concerning the establishment of an international Permanent Court of Arbitration.

The first delegate from Great Britain had given to the institution which he proposed to organize the name of "Permanent Tribunal of Arbitration."

Dr. ZORN suggested the adoption of the term "Court of Arbitrators." The expression "Arbitral Court" seemed for a time as though it ought to be reserved to designate the members of the Court acting as arbitrators in the various cases which they were called upon to decide. The term "Arbitral Tribunal" was finally agreed upon since it was already sanctioned by practice and as it was of such a character that it would be more easily accepted by all the Powers.

The establishment of a Permanent Court of Arbitration is in response to the highest aspirations of civilized peoples, to those ideas of progress which have

been realized in international relations, to the modern development of international litigation, to the need which urges nations in our day to seek a more accessible justice in a less uncertain peace. This great institution can be a powerful auxiliary for the strengthening of the feeling for law in the world.

The organization of the Court does not present insurmountable obstacles, provided we become imbued with the idea that the international community is a society of coordination and not of subordination, and that consequently the new instrument of international justice preserves the character "of a free tribunal among independent States."

The plan worked out by the Interparliamentary Union at Brussels sought to meet this fundamental demand.

The drafts submitted at the Hague Conference by the delegates of the three great States have, in various ways, sought to realize the same end.

The project of his Excellency Sir JULIAN PAUNCEFOTE was taken, with the kind consent of the authors of the Russian and American plans, as a basis for the work to which the committee devoted itself.

The fundamental features of the English plan are as follows:

I. Designation by each of the signatory Powers of an equal number of arbitrators, entered upon a general list as members of the Court.

II. Free choice, from this list, of arbitrators called upon to form the active tribunal for the various cases where resort is had to arbitration.

III. Institution at The Hague of an International Bureau serving as a registry for the Court and providing for the work of administration.

IV. Institution of a permanent Council of Administration and supreme control, composed of the diplomatic representatives of the Powers accredited to The Hague, under the presidency of the Minister of Foreign Affairs of the Netherlands.

The draft prepared by the Russian delegation rested upon the following bases:

I. Designation of five Powers by the present Conference to serve for a term to expire at the meeting of the next Conference, each Power, in case of a request for arbitration, to name a judge either from among its nationals or others.

II. Establishment at The Hague of a permanent Bureau whose duty it shall be, when the occasion arises, to advise the five Powers of requests for arbitration addressed to it.

The American plan was distinguished from the other plans principally by the following characteristics:

[90] I. Nomination by the highest court of justice of each State of a member of the international tribunal.

II. Organization of the tribunal as soon as the adhesion of nine Powers thereto should be assured.

III. Formation of the Court called upon to sit in each particular case according to conventions to be entered into between the States in controversy. These conventions may call upon all the members of the tribunal to sit or several of them, in unequal number—at least three members. When the Court is composed of only three judges, none of them shall be a native, subject, or citizen of the States whose interests are in controversy.



IV. Right of the States, in certain specified cases and after a given period, to a second hearing of the case before the same judges.

In the committee the general discussion concerning the institution of a Permanent Court of Arbitration assumed a character of exceptional importance.

The French delegation, believing that common principles and ideas were to be found in the various plans which we have just analyzed, which might serve as a basis for the discussions of the Conference, declared that it did not believe it necessary for it to submit a draft of its own. But, with the double assurance of freedom to resort to the permanent tribunal and freedom in the choice of arbitrators, it did not hesitate to support the new institution at once.

Said Mr. LÉON BOURGEOIS:

With this double assurance we do not hesitate to support the idea of a permanent institution accessible at all times and charged with the duty of applying the rules and following the procedure established by the Powers represented at the Hague Conference.

We agree, therefore, that an International Bureau should be established to ensure the continuous services of a recording office, secretarial staff, a continuous set of archives concerning arbitration; we believe that the continuity of these services is absolutely necessary not only to the maintenance of a common point for intercourse between nations, and to render more certain uniformity of procedure, and, later, uniformity of jurisprudence, but also to bring to the attention of all peoples, by some visible and respected token, the high ideal of law and humanity for the realization of which civilized States are permitted to strive through the invitation of His Majesty the Emperor of Russia.

The French delegation considers it possible to give this permanent institution a more powerful position. It believes that the Bureau could be given international authority, definitely limited, to begin proceedings, sufficient in most cases to facilitate recourse to arbitration by the Powers.

If one of the disputes recognized by the Convention as properly subject to arbitration should arise between two or more of the signatory States, the Permanent Bureau would have authority to call the attention of the disputant parties to the articles of the Convention governing this subject and the power or obligation agreed to therein to resort to arbitration in that case; consequently it would offer to serve as an intermediary between them to set arbitral procedure in motion, and give them access to its jurisdiction.

It is often a legitimate prejudice, a sentiment of the highest character, which actually prevents two nations from resorting to the path of pacific settlement. In the existing state of public opinion the first of the two Governments to ask for arbitration may fear that its taking the initiative will be considered even in its own country as an act of weakness, and not as an evidence of its confidence in its own right.

By giving the Permanent Bureau a special power to initiate proceedings, we believe we could avoid this apprehension. In avoiding a scruple of a similar character, but in cases of a more serious and more general nature, the Third Commission did not hesitate to recognize that neutrals had the right to offer mediation, and to encourage them to exercise this right it declared that their intervention could not be considered as an unfriendly act. With all the more reason, in the special cases provided for in the present Convention for arbitral procedure, it is possible to give to the Permanent Bureau a well-defined authority to initiate action. It will be given the power to call the attention of the parties to the articles of the international Con-

vention which may seem to have provided for the dispute which divides them, and will ask them, consequently, if, under circumstances anticipated by themselves, they will consent to resort to arbitral procedure, that is to say, simply to carry out their own agreements. The answer to a question thus put will be easy, and any scruple on the score of dignity, which might perhaps have prevented all recourse, will disappear. To set in action one of those powerful machines by which science transforms the world, it is sufficient to place one finger upon a contact point: but it is still necessary to entrust some one with the duty of making this simple motion.

The French delegation believes that the institution to which this international authority would be confided would play a noble and useful rôle in history.

[91] The idea first presented in these terms by the French delegation, later took the form of a proposal and it became Article 27 of the present Convention.

The general discussion opened with an address by the reporter, who set forth the prime importance of the presentation by three great Powers of plans concerning the establishment of a Permanent Court of Arbitration. He recalled the precedents which most nearly approached the present proposition. He insisted upon the necessity of developing and solidifying the organic institutions of peace.

With regard to the reservations of Dr. ZORN, German delegate, concerning the future establishment of a Permanent Court of Arbitration—an institution considered premature and too far removed from the original scope of our labors—Mr. ASSER, delegate from the Netherlands, brought out the fact that experiments with occasional arbitration had been made and that experiments still to be made were the subject of the very plan under discussion.

His Excellency Count NIGRA, for his part, called attention particularly to the dangers of declining to decide a question which interests all humanity to such a great degree.

The impatience with which public opinion awaits the results of our labors has become so great that it would be dangerous to refuse to accept an arbitral tribunal. If the Conference should meet this impatience with a *non possumus*, or fail to satisfy it, it would really be guilty of deceit. In that case the Conference would incur a grave responsibility to history, to the nations, and to His Majesty the Emperor of Russia himself.

Supporting the remarks made by Count NIGRA, Mr. ODIER, Swiss delegate, stated that more than a mere hope had been awakened in the world, it was an expectation; and popular opinion was convinced that, on the subject of arbitration above all, important results would come from the deliberations of the Conference.

No one can deny, in short [said Mr. ODIER], that we are able at this time to take a new and decisive step along the pathway of progress. Are we going to draw back, or restrict to insignificant proportions the scope of this new thing which is expected of us? We should cause universal disappointment for which the responsibility would weigh heavily upon us and upon our Governments. The real improvement which we could bring to humanity is the formation of a permanent body to show to the eyes of the world, in tangible form, so to speak, some progress realized.

Mr. LAMMASCH, delegate from Austria-Hungary, without being able to declare that his Government would be ready to support the establishment of a

permanent tribunal, considered the plan of his Excellency Sir JULIAN PAUNCEFOTE suitable as a starting point for the preparatory discussion.

Mr. MARTENS brought out especially the voluntary nature of the permanent tribunal of arbitration and the intentions of the Russian Government in formulating its first propositions concerning arbitration.

His Excellency Sir JULIAN PAUNCEFOTE stated, in his turn, that the plan proposed by him absolutely and expressly safeguarded the liberty of the parties.

Mr. HOLLS, after having recalled the fact that no country had spoken with more energy than the United States in favor of the suggestion of the Emperor of Russia, insisted upon the necessity of establishing a permanent tribunal, not only on the high ground of the interests of humanity, but from a practical and experimental point of view. He said that public opinion is anxious. He believed that we should have accomplished nothing positive if we separated without having established a permanent tribunal of arbitration.

#### ARTICLE 20

With the object of facilitating an immediate recourse to arbitration for international differences, which it has not been possible to settle by diplomacy, the signatory Powers undertake to organize a Permanent Court of Arbitration, accessible at all times and operating, unless otherwise stipulated by the parties, in accordance with the rules of procedure inserted in the present Convention.

Article 20 of the plan proposed by the committee is the reproduction, except for some points of detail, of the first article of the English plan concerning the Permanent Court of Arbitration.

This article clearly determines the general purpose of the institution of the Court: "facilitating an immediate recourse to arbitration for international differences, which it has not been possible to settle by diplomacy."

It contains the agreement made by the signatory Powers to organize the Permanent Court of Arbitration.

It indicates the general rules of procedure under which the new institution will act: these are the rules inserted in the present Convention in the chapter on arbitral procedure, so far as they agree with the organization of the Court as it is determined by Articles 20-30, and except for the right of the parties to agree upon other rules.

#### ARTICLE 21

[92] The Permanent Court shall be competent for all arbitration cases, unless the parties agree to institute a special tribunal.

This article was proposed by the Russian delegation with a view to stating precisely and clearly a twofold point: the general jurisdiction of the Court for every case of arbitration, whether obligatory or voluntary; the right retained by the Powers to form special tribunals distinct from the Court.

This provision is, in a way, the translation into the law of nations of the fundamental maxim to which we have already called attention: "A free tribunal among independent States."

Count DE MACEDO suggested, in this connection, the adoption of a provision declaring that "the signatory Powers agree that they prefer the jurisdiction of the Permanent Court of Arbitration to any other special jurisdiction, on every

occasion where circumstances will permit." This provision was very favorably received. If it was not inserted in the Convention it is, first, because we desired to avoid too direct action with regard to the freedom of States; secondly, because we believed that the sanction of the general jurisdiction of the Court in Article 21 indicates sufficiently the desire of the Powers.

Without fully sharing this opinion, Count DE MACEDO stated that he would not press his proposition.

#### ARTICLE 22

An International Bureau, established at The Hague, serves as registry for the Court. This Bureau is the channel for communications relative to the meetings of the Court. It has the custody of the archives and conducts all the administrative business.

The signatory Powers undertake to communicate to the International Bureau at The Hague a duly certified copy of any conditions of arbitration arrived at between them, and of any award concerning them delivered by a special tribunal.

They undertake likewise to communicate to the Bureau the laws, regulations, and documents eventually showing the execution of the awards given by the Court.

This article corresponds with Article 2 of the English draft and is to a large extent a reproduction thereof.

The name of "International Bureau" was substituted for that of "Central Bureau" at the request of the reporter.

The proposition for establishing at The Hague an International Bureau to serve as registry office of the Permanent Court of Arbitration, was received with the most lively sympathy.

The committee thought it possible to concentrate at The Hague, as in some rich depository, the most important documents concerning the operation of all arbitral Courts, general or special.

Two provisions proposed by Messrs. ASSER, delegate from the Netherlands, and MARTENS, Russian delegate—and forming the last two paragraphs of Article 22—were adopted by the committee for this purpose.

The archives of the International Bureau at The Hague, thus developed, will be of the greatest importance and of the greatest value.

Mr. ROLIN asked that the words "duly certified" be added to the word "copy" of paragraph 4. This proposition was accepted.

The American delegation urged broad provisions regarding the communication of documents in all forms of which the recording office of the Court has charge and custody. The committee decided that it should above all consider the rights of the interested States in the matter. With these restrictions, the committee believed that the general provisions of Article 22 and the regulations to be carried out by virtue of these provisions, would permit every legitimate satisfaction of the desire expressed by the American delegation.

#### ARTICLE 23

Within the three months following its ratification of the present act, each signatory Power shall select four persons at the most, of known competency in question of international law, of the highest moral reputation, and disposed to accept the duties of arbitrators.

The persons thus selected shall be inscribed, as members of the Court, in a list which shall be notified to all the signatory Powers by the Bureau.

Any alteration in the list of arbitrators is brought by the Bureau to the knowledge of the signatory Powers.

[93] Two or more Powers may agree on the selection in common of one or more members. The same person can be selected by different Powers.

The members of the Court are appointed for a term of six years. Their appointments can be renewed.

In case of the death or retirement of a member of the Court, his place is filled in the same way as he was appointed.

The fundamental provision of this article still corresponds exactly with the proposition of Article 3 of the plan of his Excellency Sir JULIAN PAUNCEFOTE. Each Power designates an equal number of arbitrators, and the persons thus designated are entered as members of the Court upon a general list.

The following modifications were adopted by the committee.

In the original draft, each State designated two arbitrators. Upon the suggestion of Dr. ZORN, delegate from Germany, this number was increased to four. It will be easier, under these conditions, for the States who desire it, to appoint members of diversified abilities on their arbitral delegations.

The increase in the number of arbitrators to be designated by the States was, however, regretted by many members who pointed out the practical inconveniences of this provision from many points of view. Count DE MACEDO even took the initiative for a return to the original number. The number of four arbitrators was finally accepted by agreements and compromise.

The original plan did not fix any exact limit to the time for which the arbitrators should be designated. The committee thought that there was reason for adopting the term of six years, stipulating that the appointment could be renewed.

It is admitted that two Powers can by agreement designate in common one or several members of the Court and the same person may be designated by different Powers.

These provisions, proposed by the reporter, are borrowed from the draft of the Interparliamentary Conference at Brussels.

In case of death or retirement of a member of the Court it is provided that he shall be replaced according to the method provided for his appointment. It was understood that the word "retirement" is to be taken in a broad enough sense to indicate all events which may occur.

Mr. STANCIOFF insisted on stating that no restriction upon the freedom of the Powers in the choice of arbitrators should be made as regards nationality.

#### ARTICLE 24

When the signatory Powers wish to have recourse to the Permanent Court for the settlement of a difference that has arisen between them, the arbitrators called upon to form the tribunal competent to decide this difference must be chosen from the general list of members of the Court.

Failing the composition of the arbitration tribunal by direct agreement of the parties, the following course is pursued:

Each party appoints two arbitrators, and these together choose an umpire.

If the votes are equally divided, the choice of the umpire is entrusted to a third Power, selected by the parties by common accord.

If an agreement is not arrived at on this subject, each party selects a different Power, and the choice of the umpire is made in concert by the Powers thus selected.

The tribunal being thus composed, the parties notify to the Bureau their determination to have recourse to the Court and the names of the arbitrators.

The tribunal of arbitration assembles on the date fixed by the parties.

The members of the Court, in the performance of their duties and out of their own country, enjoy diplomatic privileges and immunities.

This article corresponds to the first paragraph of Article 4 of the draft of his Excellency Sir JULIAN PAUNCEFOTE. It modifies somewhat the procedure adopted by that draft to bring within the jurisdiction of the Court the dispute which may be submitted to it. According to the original draft the Powers which desired to resort to the tribunal notified the secretary of the International Bureau of their intention. The secretary transmitted to them the list of the members of the Court, and the Powers then proceeded to form the arbitral tribunal called upon to act.

It seemed preferable to adopt the following rules:

Every change in the list of members of the Court is brought to the attention of the Powers through the Bureau: Article 23, section 3, provided for this exigency.

From the general list, thus kept up to date, the choice of arbitrators should be made when the Powers wish to approach the Court for the settlement of a dispute which has arisen between them.

The arbitral tribunal may be constituted at once by agreement of the parties. In that case there is no difficulty.

But it is very important to provide for the case where there may be no such agreement, and to determine, in that event, an easy and sure method of forming the arbitral tribunal.

The first rule would naturally appear to be: the nomination by each party [94] of an equal number of arbitrators and the designation, by all of the latter, of an umpire, whose function is most important in prospective cases of equal division of votes.

This rule is good, but incomplete, because it does not provide for a situation where there is no agreement as to the choice of the umpire. Hence, the importance of a second rule, complementary to the first, substituting for direct choice a choice confided to a third Power designated by common agreement.

This rule is still excellent, but it is in its turn insufficient. It becomes inefficient every time that the parties cannot agree upon this selection of the third Power. Hence the necessity of a third rule, in its turn subsidiary to the above.

Mr. LAMMASCH proposed to confide to the heads of neutral States the choice of an umpire.

The committee agreed with the Russian delegation in admitting that the most practical measure to be adopted is the designation by each interested party of a different Power, authority being delegated to the Powers thus designated to name the umpire jointly.

In arbitration this proceeding corresponds to that adopted for special mediation at the suggestion of Mr. HOLLS. While not theoretically perfect, it seems to be of a character to meet all possibilities for which it is practically convenient to provide.

These rules are the same as those which we find again in the chapter on arbitral procedure.

Baron BILDT proposed to give the Powers a possible right to challenge the umpire named by the arbitrators designated in the first place. With this in mind he submitted the following amendment:

Each party names two arbitrators and the latter together choose an umpire.

Their choice must, however, be submitted to the approval of the parties, each of whom has the right to challenge him without giving reasons therefor.

In the latter case, or in case of an equal division of votes, the choice of umpire is confided to a third Power, designated by common agreement by the parties.

The positive approval of this system seemed by its very nature to cause difficulty. It was not deemed necessary by the committee to safeguard in practice the rights of parties in litigation.

MESSRS. ASSER and HOLLs nevertheless urged this point, that until the formation of the tribunal the arbitrators should be considered as agents of their respective Governments. Baron BILDT on his part also supported this interpretation.

The proposal to accord to the members of the Court, in the exercise of their powers, the enjoyment of diplomatic privileges and immunities, was considered a happy addition to the original plan. It brings out the high position of the members of the Court and can only contribute to increase the prestige which should surround them.

COUNT DE GRELLE ROGIER, Belgian delegate, supported by Jonkheer VAN KARNEBEEK, asked that the scope of this provision be clearly set forth. To that end the declaration was made that it concerned the actual exercise of duties of arbitrator, and that the enjoyment of diplomatic privileges and immunities should be granted to the members of the arbitral tribunal only outside their own countries. This last point was covered by the text.

His Excellency Sir JULIAN PAUNCEFOTE believed that diplomatic immunities should be accorded to the arbitrators who, after their nomination, appeared at the place of meeting of the Court and then returned to their own countries. This point was considered as incidental to the practice of international courtesy.

#### ARTICLE 25

The tribunal of arbitration sits ordinarily at The Hague.

Except in cases of necessity, the place of session can only be altered by the tribunal with the assent of the parties.

This article, which corresponds to paragraph 2 of Article 4 of the draft of his Excellency Sir JULIAN PAUNCEFOTE, fixes the usual seat of the arbitral tribunal at The Hague and permits the tribunal to sit elsewhere with the consent of the parties in controversy. It also authorizes the tribunal, in case of *force majeure*, to proceed to change its place of meeting.

The original draft gave the tribunal the power to change its place of meeting "according to the circumstances and its convenience or the convenience of the parties in controversy." It seemed necessary not to divorce the interest of the litigating parties so completely from the question of a change in the place of meeting, and to provide for their consent in this matter.

This article has been made to agree with Article 36, regarding the meeting-place of arbitral tribunals in general.

[95]

## ARTICLE 26

The International Bureau at The Hague is authorized to place its premises and staff at the disposal of the signatory Powers for the use of any special board of arbitration.

The jurisdiction of the Permanent Court may, within the conditions laid down in the regulations, be extended to disputes between non-signatory Powers, or between signatory Powers and non-signatory Powers, if the parties are agreed to have recourse to this tribunal.

The first paragraph of this article is new. It was proposed by his Excellency Sir JULIAN PAUNCEFOTE and Mr. ASSER, with a view to permitting the Powers which might establish special courts to profit, if agreeable to them, by the offices established and the administrative force acting at The Hague.

The Powers non-signatory to the present Convention will not enjoy the same favor when they establish special courts. But access to the jurisdiction of the Permanent Court of Arbitration may be given them. The draft of his Excellency Sir JULIAN PAUNCEFOTE already provided in a general way for this situation. It was more definitely stated by an amendment from Mr. RENAULT, in the following words:

The jurisdiction of the Permanent Court may be extended to disputes between non-signatory Powers, or between signatory Powers and non-signatory Powers, if the parties are agreed to have recourse to this tribunal.

Mr. RENAULT believed it would be proper to leave to the Permanent Council complete freedom to establish a schedule of costs if it deemed it proper in this connection. His Excellency Count NIGRA expressed the opinion that it was necessary to leave the door to arbitration as wide open as possible.

## ARTICLE 27

The signatory Powers consider it their duty, if a serious dispute threatens to break out between two or more of them, to remind these latter that the Permanent Court is open to them.

Consequently, they declare that the fact of reminding the parties at variance of the provisions of the present Convention, and the advice given to them, in the highest interests of peace, to have recourse to the Permanent Court, can only be regarded as in the nature of good offices.

This provision is due to the suggestion of the French delegation. It was received with marked sympathy by all the members of the committee.

Obstacles which may in many cases work against recourse to arbitration by two Powers between whom a serious dispute has arisen, become of moment in the then existing state of public opinion. It is of the utmost importance, therefore, in the interest of peace, to smooth the way for such recourse, as desirable as it is difficult in some cases.

If the Conference wishes to perform a work productive of helpful results, it should face this practical side of the peace problem.

Is it possible, from this view-point, to invest the Bureau at The Hague with an international authority, clearly limited, to call the attention of Powers which find themselves at any time in sharp conflict, to the provisions of the present Convention, and to the ever-open door of the Permanent Court?

Baron d'ESTOURNELLES DE CONSTANT urged especially the idea that there is more than a right to be exercised: there is a duty to be fulfilled, the accomplish-



ment of which duty can alone give to the act of the Hague Conference its full moral value and efficacy. He therefore proposed to the committee the adoption of the following provision:

The signatory Powers, considering it a duty, in case a sharp dispute threatens to break out between two or more of them, to call the attention of the disputants to the fact that the Permanent Court is open to them, hereby authorize the secretary general of the Bureau, when occasion arises, to place himself at the service of each of the interested parties, by writing to their representatives in the Netherlands.

The exercise of this authority shall not be considered an unfriendly act.

This proposition had the advantage of creating an organization acting to some extent by itself and whose modest but certain duty appeared to be of a nature to produce the desired result, without offending the States in controversy.

From other standpoints it presented such difficulties that the committee, not without regret, was obliged to renounce it.

The idea of confiding international authority, in this matter, to the Powers which are "neutral in principle" also gave rise to serious objections.

In calling attention to the reasons which might recommend the proposal of Baron d'ESTOURNELLES DE CONSTANT, President LÉON BOURGEOIS had called attention to the possibility of attaining the same end by another means: applying, in these special circumstances, the right to offer good offices, guaranteed by

Article 3 of the present Convention. He urged especially the importance of [96] considering this act as a duty.

This proposition was a new development of the principle formulated at the beginning for the work of the committee by his Excellency Count NIGRA, a principle which was to be extended not only to mediation but to arbitration, in the draft of the first delegate from Italy.

The committee, in spite of certain fears expressed at first, unanimously supported the proposition made to it, and this proposition found expression in Article 27. The committee thought that, in view of the important end to be attained, it was necessary to make a brave attempt in the direction where there is a noble and useful rôle to be played in direct relation to the work carried on by all the Powers at the Hague Conference.

The discussion about Article 27 in the Commission gave rise to a debate exhibiting peculiar breadth of view and notably high ideals.

Mr. BELDIMAN and Mr. VELJKOVITCH proposed to substitute for "the Powers consider it their duty" this expression: "the Powers believe it desirable."

Mr. BELDIMAN presented this amendment because it was involved in the principle of voluntary arbitration adopted by his Government.

Mr. VELJKOVITCH, while stating that his Government sympathized with the principle of obligatory arbitration, represented that the new provision was useless in view of Articles 1 and 3, as it touched upon such delicate questions that they should form the subject of reservations, since they applied unequally to the large and small Powers.

Baron d'ESTOURNELLES DE CONSTANT recalled the necessity of stating the fact that States have not only rights but duties in this connection.

His Excellency Count NIGRA stated that the Conference is composed of representatives of States absolutely equal among themselves, who are independently entering into discussion and who have come together with the sole idea of performing a useful work for peace.

Dr. ZORN, after having summarized the reasons for his Government's decision not to support the propositions concerning obligatory arbitration, declared that Germany wished to do all it could for peace, and that, with that idea, she had no objection to Article 27.

Mr. ODIER observed that new duties arise in a new era and that the neutral nations of our day should be, to adopt a new word: "managers of peace" (*pacigérants*).

Mr. HOLLS set forth in his turn the importance of the assertion of the existence of a moral duty on the part of the States as a corollary of the joint and several liability which unites peoples.

Mr. STANCIOFF believed that, if we admit that it is a duty to call attention to the existence of the Permanent Court—and that would always be a benefit—it is important also to indicate the manner in which this duty is to be performed.

In setting forth definitely the scope of Article 27, President LÉON BOURGEOIS stated that, "the disputes contemplated by Article 27 are those which menace peace." "As for the fear expressed by the delegate from Serbia that a strong Power will make use of Article 27 to attempt objectionable intervention into the affairs of a weaker Power, I simply maintain," said the president, "that, if a Power should act in that manner, far from possessing the spirit of Article 27, that Power would, it seems to me, act absolutely against its purpose and against its spirit. So far as we are concerned, if this article could produce such a consequence, we not only would not have taken the initiative with regard thereto, but, if it had been presented by others, we would have energetically fought against it and refused to vote for it."

Defining, then, the practical value of Article 27, the president stated "that it was necessary to recall in considering arbitration the principles written in the first article of the Convention whereby the signatory Powers agree to use every effort to ensure the peaceful settlement of international disputes."

The first application of these principles was made in the articles concerning offers of good offices and mediation.

Article 27 is a new application of these same principles.

But it is not only a question of the practical usefulness of this provision (the president added). What makes us determined to defend it so energetically is that it appears to us to have a moral usefulness the greatness of which will be better comprehended every day that passes after the conclusion of our labors.

The moral value of Article 27 consists entirely in the fact that a common duty for the maintenance of peace among men is recognized and affirmed among nations. Do you believe that it is a small thing to have proclaimed in this Conference—not in a meeting of theorists and philosophers, discussing with freedom and upon their personal responsibility alone, but in an assembly where the Governments of nearly all civilized nations are represented—the existence of this international duty, and to have declared that the con-  
[97] cept of this duty, henceforth for ever introduced into the conscience of peoples, is in the future to be impressed upon the acts of governments and nations?

International institutions like this (said the president in conclusion) will be the guaranty of the weak against the strong. In conflicts in strength when it is a question of lining up soldiers of flesh and steel, there are the great and the small, the weak and the strong. When swords are thrown into the two trays of the balance, one may be heavier and the other lighter. But, when we throw in ideas and rights, the inequality ceases and the rights of the smallest and the weakest weigh equally with those of the greatest.

This idea has dictated our work, and we have thought especially of the weak in carrying it out.

May they understand our idea and respond to our hope by joining in the efforts made to regulate more and more the future of humanity by law!

Following these words, which were greeted by the prolonged applause of the assembly, the retention of Article 27 as it stood was unanimously agreed upon.

#### ARTICLE 28

A Permanent Administrative Council, composed of the diplomatic representatives of the signatory Powers accredited to The Hague and of the Netherland Minister for Foreign Affairs, who will act as president, shall be instituted in this town as soon as possible after the ratification of the present act by at least nine Powers.

This Council will be charged with the establishment and organization of the International Bureau, which will be under its direction and control.

It will notify to the Powers the constitution of the Court and will provide for its installation.

It will settle its rules of procedure and all other necessary regulations.

It will decide all questions of administration which may arise with regard to the operations of the Court.

It will have entire control over the appointment, suspension or dismissal of the officials and employees of the Bureau.

It will fix the payments and salaries, and control the general expenditure.

At meetings duly summoned the presence of five members is sufficient to render valid the discussions of the Council. The decisions are taken by a majority of votes.

The Council communicates to the signatory Powers without delay the regulations adopted by it. It addresses to them an annual report on the labors of the Court, the working of the administration, and the expenditure.

The original draft provided for the nomination by the Government of the country selected as the seat of the Court, of a Permanent Administrative Council, composed of five members and a secretary, with the duty of establishing and organizing the International Bureau as well as determining questions concerning the operation of the Court.

During the debate his Excellency Sir JULIAN PAUNCEFOTE proposed to substitute for this machinery, the advantages of which were being discussed, another permanent Council composed of the diplomatic representatives of the signatory Powers residing at The Hague, under the presidency of the Minister of Foreign Affairs of the Netherlands. This excellent modification received general endorsement.

At the suggestion of Baron BILDT the words "residing at The Hague" were replaced by the broader expression "accredited to The Hague." It is always understood that non-resident diplomats shall have such an understanding with the Permanent Council that all communications—and especially notices of meetings—may be addressed to them at The Hague.

The greater part of the original organic provisions were applied to the new Council. To it was also confided the duty of notifying the Powers of the constitution of the Court and of providing for the installation of the latter.

The provisions proposed in this connection can only further increase the high dignity of the Permanent Court of Arbitration. They will give to The Hague special authority and prestige.

At the suggestion of his Excellency Count WELSERSHEIMB, the essentially administrative character of the Council was clearly set forth, notably with regard to its powers in connection with the operation of the Court.

The Council itself will bear the title "Permanent Administrative Council."

Communication to the Powers of the rules adopted by the Council has been provided for, without this communication resulting in subjecting these rules to the approval of each Power.

It was also understood that the Permanent Council should be formed as soon as possible after the ratification of the present act by nine Powers at least.

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#### ARTICLE 29

The expenses of the Bureau shall be borne by the signatory Powers in the proportion fixed for the International Bureau of the Universal Postal Union.

The rules for the division of expenses agreed to by all the States in connection with the International Bureau of the Universal Postal Union, have been considered equitable and applied several times since then in similar conventions.

It appeared to the committee that the best solution here was purely and simply to adopt these rules, the application of which causes no difficulty.

#### CHAPTER III.—*Arbitration procedure*

General rules of law accepted by agreement among the States do not at present exist with regard to arbitration procedure. As a result we have delays, uncertainty, injurious impediments to the prompt and smooth progress of cases submitted to arbitrators.

Each special *compromis* can, doubtless, provide to a certain extent for this lack, and the history of international arbitration informs us of numerous provisions drawn up, in fact, with this end in view. It is none the less true that as the number of cases of actual recourse to arbitration increases, and as the treaty stipulations for the making of *compromis* increase, the lack of common fundamental rules concerning the procedure to be followed by arbitrators produces more and more damaging results.

The Institute of International Law, has for a long time, led the way in this matter. After having worked out a draft of a set of rules of arbitral procedure at Geneva in 1874, it finally adopted this draft at The Hague, April 28, 1875, making the following note as the preamble thereof:

The Institute, desiring that recourse to arbitration for the settlement of international disputes be resorted to more and more by civilized peoples, hopes to be of service toward the realization of such progress by proposing, for arbitral tribunals, the following eventual regulations. It recommends them for adoption, in whole or in part, to States that may conclude *compromis*.

The very remarkable work of the Institute has since been completed by others, the works of eminent juriconsults. It has been enriched by the practice in numerous international arbitrations which have occurred during the last quarter of a century. We may to-day, drawing from the double source of science and experience, bring together a collection of rules relative to the guidance and decision of arbitral matters, which seem to merit general approval.

Such rules should be limited to fundamental principles. They could not be too detailed without being a hindrance and a danger. But within the just limits where it is convenient to accept them, they may render important service to the arbitral courts often called upon to act *ex tempore*. They may serve as typical rules to which it will be expedient to refer. They may aid in filling up the gaps in the *compromis*, which ordinarily formulate only a few and very incomplete rules. As they will also, under all circumstances, always retain their character as auxiliary rules, the wishes of the litigating parties may always override them, modify them, or do away with them. They will not control the points which they cover except in the event and so far as the States have not otherwise provided.

In the development of these rules, the committee took for its guide the draft of the arbitral code submitted to the Conference by the Russian delegation. Revised by men of special ability, and particularly by a juriconsult in whom we all recognize an embodiment of international arbitration, this code cannot fail to bear the seal of wise experience. The provisions therein contained closely approach, in many regards, the rules of procedure adopted by the tribunal at present sitting in Paris under the presidency of Mr. MARTENS, for the settlement of the disputes between Great Britain and Venezuela.

#### ARTICLE 30

With a view to encouraging the development of arbitration, the signatory Powers have agreed on the following rules, which shall be applicable to arbitration procedure unless other rules have been agreed on by the parties.

This article corresponds to Article 13 of the Russian draft. This last [99] provision dealt with arbitral procedure with a view of setting forth the double character of the rules proposed in this connection:

Auxiliary rules of such a character as to facilitate recourse to arbitration and its application.

Also rules of an optional character, that is, rules that may always be modified by common agreement between the parties in litigation.

Article 19 attributes these same characteristics to the fundamental rules of arbitration procedure which form Chapter III of the present Convention.

#### ARTICLE 31

The Powers which have recourse to arbitration sign a special act (*compromis*), in which are clearly defined the subject of the dispute and the extent of the arbitrators' powers. This act implies an engagement of the parties to submit in good faith to the arbitral award.

The convention for international arbitration is an agreement between States for a judicial settlement of existing or possible international disputes by judges of their choice.

This convention implies an adequate determination, on the one hand, of disputes susceptible of arbitration, and, on the other hand, of the tribunal called upon to pass upon these disputes.

Disputes to arise in the future are adequately specified by a statement of their character.

The arbitral tribunal is sufficiently described by an indication of the process according to which it is to be formed.

The parties which conclude an arbitral convention for future disputes, may retain the right to set forth exactly, by a special and further convention in each case of actual recourse to arbitration, the points upon which the dispute bears, as well as the authority conferred upon the arbitrators.

They may also reserve the right to make the final arrangements necessary to nominate the arbitrators.

When parties conclude a *compromis* properly speaking, in other words, when they agree to settle an existing dispute by arbitration, they have the right to set forth exactly in their agreement the points referred to the judgment of the arbitrators and the constitution of, or the method of forming, the tribunal called upon to act.

The first general rules of procedure, the adoption of which is proposed to the States, contains in two separate articles these two elements of the *compromis*.

To describe the first point which the *compromis* should set forth in exact terms in order not to run the risk of being without any real foundation, Article 2 of the draft for the arbitral code used the following terms: "questions submitted to the decision of the arbitrators and all of the facts and points of law involved therein."

The last part of this phrase was criticized by Mr. ASSER. We cannot, for instance, demand that the *compromis* should specify "all of the facts which are involved in the question submitted to the decision of the arbitrators." It seems, in fact, that it would have been preferable to say "the points of law and fact submitted to the decision of the arbitrators." The committee believed it could use the following words as a still more satisfactory formula: "the subject of the dispute and the extent of the powers conferred upon the arbitrators."

It thus approached the provisions contained in Article 2 of the general treaty of arbitration between Italy and Argentina, July 23, 1898.

The second part of Article 31, declaring that "in the *compromis* is to be found a confirmation of the engagement of the parties to submit in good faith to the arbitral award," appeared to be difficult to explain in view of Articles 17 and 18 of the draft, where it is said that the arbitral convention, concluded to cover existing disputes, implies this same obligation.

The committee believed there was reason for adopting in Article 31 the same terms as in Article 18. It accepted, therefore, the following revision: "This act implies an engagement of the parties to submit in good faith to the arbitral award."

#### ARTICLE 32

The duties of arbitrator may be conferred on one arbitrator alone or on several arbitrators selected by the parties as they please, or chosen by them from the members of the Permanent Court of Arbitration established by the present act.

Failing the composition of the tribunal by direct agreement of the parties, the following course is pursued:

Each party appoints two arbitrators, and these together choose an umpire.

If the votes are equally divided, the choice of the umpire is entrusted to a third Power, selected by the parties by common accord.

If an agreement is not arrived at on this subject, each party selects a different Power, and the choice of the umpire is made in concert by the Powers thus selected.

[100] Article 32 is of considerable importance because it attempts above all to determine the best method of forming the arbitral tribunal, when the latter is composed of several arbitrators and is not fully constituted at the beginning.

The choice of arbitrators belongs in the first place to the interested Powers.

The designation of a single arbitrator, if the affair is important, is of exceptional seriousness: it is proper, in short, to observe that the award to be rendered cannot, according to the existing practice, be subject to appeal.

When the parties prefer a number of arbitrators to a single arbitrator they may agree upon the complete organization of the tribunal at the start. This procedure prevents all further difficulty. But, in default of the formation of the tribunal by direct agreement of the parties, there is need to determine a normal method for forming the arbitral tribunal. Article 32 provides for this exigency. The rules adopted in this article are similar to those which we have indicated in Article 24. We have already set forth the theory thereof.

#### ARTICLE 33

When a sovereign or the chief of a State is chosen as arbitrator, the arbitration procedure is settled by him.

When the arbitrator chosen is the head of a State, it would not, for reasons of the highest expediency, be suitable to permit any provision for procedure other than that set up by his supreme will. This principle is sanctioned in Article 33.

#### ARTICLE 34

The umpire is *ex officio* president of the tribunal.

When the tribunal does not include an umpire, it appoints its own president.

It seemed necessary to settle finally and in a separate provision the question of who should act as president.

When there is an umpire in the tribunal it is proper to reserve the presidency for him, *de jure*.

In the contrary case, it is convenient to allow the tribunal itself to make its choice.

Article 34 sanctions this double rule.

With regard to this article Mr. PAPINIU, delegate from Roumania, called the attention of the Commission to the difficulties which might arise from the formation of a tribunal consisting of an equal number of arbitrators, or from circumstances which might accidentally bring about this situation, at the moment of rendering the decision.

The Commission recognized the importance to be attached to the organization of tribunals composed of an unequal number of arbitrators, as is provided elsewhere in the general system adopted by the present Convention.

## ARTICLE 35

In case of the death, retirement, or disability from any cause of one of the arbitrators, his place is filled in the same way as he was appointed.

The question of the effect to be given to the decease, retirement, or disability of an arbitrator, for any special reason, was vigorously discussed in the committee.

The Russian draft declared the entire *compromis* invalid in such a case, unless a contrary stipulation was provided in advance by the parties.

In support of this view the argument was made that the designation of the arbitrators is intimately associated with a feeling of personal confidence. The legal argument was relied upon that as soon as the representative disappeared the authority conferred upon him no longer existed. It was alleged to be necessary to ensure the strongest guaranties to States which adopted arbitration.

According to another opinion, it would at least be convenient to put in force the rule proposed by the Russian delegation in case of death, retirement, or disability of the umpire, because of the peculiarly important rôle of the latter in the operation of arbitral courts.

These considerations did not prevail.

The importance of ensuring the existence of the *compromis* and its results, by protecting it as much as possible from the extreme consequences of unforeseen circumstances, was set forth. When two Governments have agreed [101] upon arbitration, there is great interest in preventing any chance occurrence from destroying the fruit of their labors.

On the other hand, it was observed that in requiring a provision for replacing the umpire according to the method chosen for his election, the guaranties originally established would in fact be preserved.

The view based upon these latter arguments was finally adopted by the committee as sanctioning a rule favorable to the maintenance of arbitration. The parties retain entire freedom to provide, if they prefer, for the possible nullification of the *compromis*.

## ARTICLE 36

The tribunal's place of session is selected by the parties. Failing this selection, the tribunal sits at The Hague.

The place thus fixed cannot, except in case of necessity, be altered by the tribunal without the assent of the parties.

The question of the meeting-place of the tribunal may be of great importance to the parties in litigation from various view-points. It is important especially to leave the choice in this matter to them.

Furthermore, it is not to be presumed that they would consent to divest themselves completely of all interest in a change of the place of meeting.

That is the reason why Article 36 provides that in this also their joint assent is necessary, except in case of *force majeure*.

If no provision is made by the parties, the seat of the Permanent Court of Arbitration seems naturally to receive preference.

Article 36 translates into law these practical observations.

Let us note that, with regard to the Permanent Court, Article 25 fixes The Hague as the customary seat and first in order.



## ARTICLE 37

The parties are entitled to appoint delegates or special agents to attend the tribunal to act as intermediaries between themselves and the tribunal.

They are further authorized to commit the defense of their rights and interests before the tribunal to counsel or advocates appointed by them for this purpose.

The delegates or special agents of the parties play an important rôle in arbitral procedure: they are the intermediaries between the parties and the tribunal.

Article 13 of the rules of the Institute of International Law is as follows:

Each of the parties may appoint one or more representatives before the arbitral tribunal.

The appointment of such representatives exists everywhere in practice.

Article 37 sanctions it by making a distinction between these principal official agents and the counselors and lawyers who are, under different conditions, also aids to arbitral justice.

Mr. SETH Low called attention to the inconsistencies in exercising the functions of a member of the Permanent Court and those of special agent or lawyer before this Court. The committee, to which the examination of this question was referred, expressed the opinion that no member of the Court can, during the exercise of his functions as a member of an arbitral tribunal, accept a designation as special agent or attorney before another arbitral tribunal. The committee did not feel itself in a position to go farther in the matter of inconsistencies applicable to all States.

At the request of Mr. ASSER it was stated that the expression "arbitral tribunal" did not designate any tribunal except one formed from the Permanent Court of Arbitration.

His Excellency Sir JULIAN PAUNCEFOTE, Mr. LAMMASCH, and Mr. HOLLS were of the opinion that it was important to establish the duties of a member of the Permanent Court of Arbitration as generally inconsistent with those of special agent or attorney before this Court, making an exception only in the case where a member of the Court might represent as attorney or special agent the country which appointed him to the Court.

## ARTICLE 38

The tribunal decides on the choice of languages to be used by itself, and to be authorized for use before it.

It may be indispensable, to avoid multifarious difficulties, and in certain cases to make it possible for the arbitrators to perform their duties, to decide the question of the language which will be authorized before the arbitral tribunal. [102] It should be within the province of the tribunal to decide in this matter upon what measures it believes necessary: that is what Article 38 formally decides.

An amendment proposed by the first delegate from Italy completed the provision originally voted by the committee by authorizing the tribunal to decide upon which language it will use itself, especially in the decision to be rendered.

## ARTICLE 39

As a general rule arbitration procedure comprises two distinct phases: pleadings and oral discussions.

The pleadings consist in the communication by the respective agents to the members of the tribunal and the opposite party of all printed or written acts and of all documents containing the grounds relied on in the case. This communication shall be made in the form and within the time fixed by the tribunal in accordance with Article 49.

The discussions consist in the oral development before the tribunal of the arguments of the parties.

Procedure prior to the award generally covers two periods, which it is desirable to distinguish: pleadings and oral discussions.

The first is always indispensable; the second is ordinarily a necessary complement of the first.

Important consequences are attached to the close of the pleadings.

The Russian draft designated these two periods of arbitral procedure as follows: "preliminary phase and final phase."

## ARTICLE 40

Every document produced by one party must be communicated to the other party.

The committee believed it important to sanction positively in a separate article this rule of judicial procedure: "Every document produced by one party must be communicated to the other party."

This is a guaranty of prime importance, the sanction of which finds its natural place in the general code of arbitral procedure.

## ARTICLE 41

The discussions are under the direction of the president.

They are only public if it be so decided by the tribunal, with the assent of the parties.

They are recorded in the minutes drawn up by the secretaries appointed by the president. These minutes alone have an authentic character.

Article 41, after having given the control of the discussions to the president, deals with the possible publicity of the discussions and with their record in minutes of an authentic character.

So far as the first point is concerned, it did not seem possible to formulate as a rule the principle of publicity. Publicity, however, is not forbidden. It is conditioned upon two things: a decision by the tribunal upon this point and the consent of the parties. If accepted within these limits, publicity does not present any of the difficulties which the application of a broader measure might offer in international arbitral procedure.

Regarding the second point, practice has shown the necessity of giving an authentic character only to the minutes drawn up by the secretaries named by the president of the tribunal.

## ARTICLE 42

After the close of the pleadings, the tribunal is entitled to refuse discussion of all new papers or documents which one of the parties may wish to submit to it without the consent of the other party.

The fairness of the discussions, no less than the general demands of judicial procedure, requires that after the close of the pleadings, the tribunal shall have, to a certain extent, the power to refuse to consider papers and documents presented late.

The committee, however, considered the rule contained in Article 12 of the Russian draft as too rigid. It was thought that the authority of the tribunal ought not to be permitted to be exercised except with regard to new papers and documents which the representatives of one of the parties wished to submit to the tribunal without the consent of the other party. It did not appear desirable for the tribunal to be able to sacrifice one means of arriving at the truth, honestly agreed to by the adverse party. Even within the limits where the power of the tribunal is recognized, foreclosure seems to be a grave measure which should not be followed except with a full appreciation thereof.

[103]

#### ARTICLE 43

The tribunal is free to take into consideration new papers or documents to which its attention may be drawn by the agents or counsel of the parties.

In this case, the tribunal has the right to require the production of these papers or documents, but is obliged to make them known to the opposite party.

The freedom of the tribunal to take into consideration the papers and documents of which use has been made by the agents or counsel of the parties in litigation during their arguments before the arbitral tribunal, should of course remain unimpaired.

The right of the tribunal to require the production of these papers and documents appears equally incontestable.

The Russian draft recognized simply the right of the tribunal to give notice of these documents to the adverse party. The committee believed that it was not an optional right which must be sanctioned in this case, but an obligation.

The text of the Russian draft was modified to this end.

#### ARTICLE 44

The tribunal can, besides, require from the agents of the parties the production of all papers, and can demand all necessary explanations. In case of refusal, the tribunal takes note of it.

Among the powers recognized as appertaining to the Arbitral Court, to enable it to discover the truth, the Russian draft admitted the right of the tribunal "to require the agents of the parties to present all papers or explanations which it needs."

The committee thought that the sanction of this power, without reservation, was not desirable, and that there might be cases where refusal would be justified. The tribunal is to take note of such refusals, but it should not go beyond that.

This necessary reservation is clearly indicated in Article 44.

#### ARTICLE 45

The agents and counsel of the parties are authorized to present orally to the tribunal all the arguments they may consider expedient in defense of their case.

Article 45 cannot give rise to any difficulty; it sanctions the possible rights of the defense in open discussion before the Arbitral Court. It is a reproduction of the provision contained in the Russian draft, in almost the same terms.

## ARTICLE 46

They are entitled to raise objections and points. The decisions of the tribunal on these points are final, and cannot form the subject of any subsequent discussion.

Article 46 reproduces again, except for a more accurate revision, a provision borrowed from the Russian draft.

It deals with exceptions and points of procedure which may be raised before the international arbitral tribunal, in the same way as before national tribunals.

The rights of the parties in litigation should be safeguarded in this matter, but it is important on the other hand that the decisions of the Arbitral Court upon such points should settle the difficulties finally.

Article 46 satisfies this double requirement.

## ARTICLE 47

The members of the tribunal are entitled to put questions to the agents and counsel of the parties, and to ask them for explanations on doubtful points.

Neither the questions put nor the remarks made by members of the tribunal in the course of the discussions can be regarded as an expression of opinion by the tribunal in general, or by its members in particular.

Article 47 contains a provision so natural that it seems, at first sight, almost unnecessary. It presents, however, a practical point which was very well brought out in the committee by Mr. MARTENS.

In order that the right of investigation and control possessed by the members of the tribunal may be effectively exercised, the arbitrators must be protected in the questions which they think necessary to ask and the observations which they believe they should make, from interpretations which one may be led too easily to attach to attempts to seek information which may be indispensable to [104] the discovery of the truth.

From this point of view it is very expedient after having recognized their right, to declare expressly that neither the questions asked nor the observations made by the members of the tribunal in the course of the discussions can be regarded as an expression of the opinion of the tribunal in general, or of its members in particular.

Such is the purpose and the reason for Article 47.

## ARTICLE 48

The tribunal is authorized to declare its competence in interpreting the *compromis* as well as the other treaties which may be invoked in the case, and in applying the principles of international law.

The right of the tribunal to determine the scope of its powers by the interpretation of the *compromis* and of the other treaties which may be invoked in the proceeding, and by the application of principles of international law must be recognized. Not to accept this view would be to place the tribunal in the condition of a court incapable of acting, and obliged to divest itself of jurisdiction of the controversy every time that it might please one of the parties to maintain, even against the evidence, that the tribunal could not take cognizance of such a question.

The more arbitration assumes the character of an institution of international common law, the more the power of the arbitrators to decide upon this matter

appears to be of the very essence of the arbitral function and one of the inherent requirements for the exercise of this function.

The parties may, of course, limit as they may agree the extent of the powers of the arbitrators; they may submit the exercise of this power to such reservations as they deem necessary or opportune. They may, if they choose, formulate the principles which the arbitrators shall follow to guide them in their decision. But it does not seem possible to refuse the arbitrators the power of deciding in case of doubt whether the points are within or without their jurisdiction.

Such is the principle sanctioned by Article 48.

The reporter asked that Article 48 be completed by a provision setting forth the rules according to which the arbitrators should give judgment. This point was considered, properly speaking, as not coming within the field of arbitral procedure.

#### ARTICLE 49

The tribunal is entitled to issue rules of procedure for the conduct of the case, to decide the forms and time in which each party must conclude its arguments, and to arrange all the formalities required for dealing with the evidence.

The principal provisions contained in Article 19 of the Russian draft and contained in Article 49 of the committee's draft are borrowed from Article 15 of the rules of the Institute of International Law.

They concern the right to issue rules of procedure for the conduct of the case, and to decide the forms and time in which each party must present its conclusions.

It seems useless to set forth, as did Article 19 of the Russian draft, "the right to pass upon the interpretation of the documents produced and communicated to the two parties."

But it was not thought unimportant to insist upon the right to arrange all the formalities required for dealing with the evidence. Upon this vital point it is important to invest the arbitrators with the most extended powers.

#### ARTICLE 50

When the agents and counsel of the parties have submitted all the explanations and evidence in support of their case, the president pronounces the discussion closed.

Article 50 concerns the closing of the discussions and cannot cause any difficulty. It is a reproduction in almost its exact words of a provision contained in the Russian draft.

#### ARTICLE 51

The deliberations of the tribunal take place in private. Every decision is taken by a majority of members of the tribunal.

The refusal of a member to vote must be recorded in the minutes.

Article 51 deals with the deliberations, which take place in secret. According to this article, each decision shall be reached by a majority vote of the [105] members of the tribunal.

The Russian draft required only a majority of the members present, which seemed an insufficient guaranty.

Any refusal on the part of a member to take part in the vote should be stated in the minutes.

## ARTICLE 52

The award, given by a majority of votes, must state the reasons on which it is based. It is drawn up in writing and signed by each member of the tribunal.

Those members who are in the minority may record their dissent when signing.

The Russian draft, in providing regulations on various points concerning the decision, did not speak of the obligation of the arbitrators to give the reasons for their award. This omission arises from considerations of a practical nature. The obligation to give the reasons for the award may be a delicate matter to accomplish and particularly difficult for the arbitrators belonging to the country against which the decision is rendered.

While recognizing the value of this remark, the committee, at the suggestion of Dr. ZORN, and after mature deliberation, declared in favor of the insertion of Article 52 of the obligation to set forth the reasons for the arbitral decision. That is a fundamental guaranty which cannot be renounced. There is scarcely an example of an arbitral award without the reasons therefor. The duty to state the reasons may, furthermore, be exercised in varying degrees, thereby permitting the difficulties mentioned to be avoided without evading the obligation.

The obligation to set forth the reasons for the award, which was discussed in the Commission again, was finally adopted, at the same time noting the statement that the form and scope of this duty are practically of wide extent.

Mr. ROLIN expressed the view that arbitrators should be required to set forth the reasons for possible votes contrary to the opinion of the majority. But it was observed that this would expose us to the possibility of having two awards in each case and of bringing the disagreement of the arbitrators before the public.

His Excellency Count NIGRA asked that the tribunal be authorized to fix a period within which the award should be executed. Dr. ZORN opposed this. At the close of the discussion of a draft communicated to the various Governments it was recognized that it was preferable not to make an absolute statement upon this point, and his Excellency Count NIGRA declared that he would not insist upon his proposition.

## ARTICLE 53

The award is read out at a public sitting of the tribunal, the agents and counsel of the parties being present or duly summoned to attend.

Article 53 deals with the reading of the decision in public session. "In the presence of the agents and counsel of the parties," ran the Russian draft. "Or duly summoned to attend," added the draft of the committee.

"The agents and counsel of the parties being present or duly summoned to attend," says the text finally adopted at the suggestion of Mr. ODIER.

## ARTICLE 54

The award, duly pronounced and notified to the agents of the parties at variance, settles the dispute definitively and without appeal.

Article 54 is uniform, except for details of revision, with the corresponding provision of the Russian draft, and insists upon the decisive and unappealable character of the arbitral award.

## ARTICLE 55

The parties can reserve in the *compromis* the right to demand the revision of the award.

In this case, and unless there be an agreement to the contrary, the demand must be addressed to the tribunal which pronounced the award. It can only be made on the ground of the discovery of some new fact which is of a nature to exercise a decisive influence upon the award, and which, at the time the discussion was closed, was unknown to the tribunal and to the party demanding the revision.

Proceedings for revision can only be instituted by a decision of the tribunal expressly recording the existence of the new fact, recognizing in it the character described in the preceding paragraph, and declaring the demand admissible on this ground.

The *compromis* fixes the period within which the demand for revision must be made.

The question of the revision of the arbitral award was first vigorously discussed in the committee, and then again in the general meeting of the Third Commission.

The plan for the institution of a Permanent Court of Arbitration presented [106] by the American delegation provided as follows, in Article 7:

Every litigant party which submits a case to the international tribunal shall have the right to a second hearing of its cause before the same judges, within the three months following the announcement of the decision, if it declares that it can call new witnesses or raise questions of law not raised or decided at the first hearing.

The American delegation proposed the introduction of this rule into general arbitral procedure in whatever form it might be deemed best.

The judicial principle upon which revision is based was set forth and recognized. The necessity of finally deciding disputes referred to an arbitral tribunal, and not shaking the authority of the award rendered by the arbitrators, was also defended.

The committee, at the suggestion of President LÉON BOURGEOIS, by a majority vote adopted a provision writing into the general code of arbitral procedure the rule of revision restricted as to the Court to take cognizance thereof, as to the facts which should furnish a basis therefor, and as to the period within which it would be allowed.

Revision should be requested of the tribunal which rendered the decision.

It cannot be based upon anything except the discovery of a new fact which would have been of such a nature as to exercise a decisive influence upon the award, and which, after the close of the discussions, was unknown to the tribunal and to the party which demanded the revision.

As to the period within which the request for a revision may be received, it was at first fixed at three months, then at six months, at the suggestion of Messrs. CORRAGONI D'ORELLI and ROLIN, delegates from Siam.

His Excellency Count NIGRA proposed the adoption of the provisions of Article 13 of the recent treaty of arbitration between Italy and Argentine.

A compromise proposal was then made in the committee by Mr. ASSER, delegate from the Netherlands. By the terms of this proposition the parties may reserve the right in the *compromis* to demand the revision of the arbitral award, and in providing for this request, the revision is, under the code of arbitral procedure, subject to the same conditions as heretofore proposed.

However, the *compromis* is to determine the period within which the demand for revision shall be made. This last proposition, made by the American delegation, was adopted by the Commission at the same time as the proposition of Mr. ASSER.

So far as the general question of the causes which may nullify an arbitral award are concerned, the Russian draft contained the following provision: "The arbitral award is void in case of a void *compromis* or exceeding of powers, or of corruption proved against one of the arbitrators." Mr. ASSER asked, for his part, if some Power could not be found which should have the duty of declaring an award void, in order not to leave so serious a decision to arbitrary determination or to the initiative of the State against which the award was rendered.

In the examination of this question, the committee stopped before the difficulties of providing for cases of invalidity without determining at the same time who should be made the judge of these cases. It was observed, however, that the Permanent Court of Arbitration could guide States to a solution of this matter.

#### ARTICLE 56

The award is binding only on the parties who concluded the *compromis*.

When there is a question as to the interpretation of a convention to which Powers other than those in dispute are parties, the latter notify to the former the *compromis* they have concluded. Each of these Powers is entitled to intervene in the case. If one or more avail themselves of this right, the interpretation contained in the award is equally binding on them.

The provision contained in Article 56 is due to the suggestion of Mr. ASSER.

A question of interpretation may arise between two Powers concerning a convention to which other Powers were parties. When it is a question of so-called "Universal Unions" the parties in litigation ordinarily represent but a very small number of the contracting parties.

Mr. ASSER believed it was important to provide for notifying the other Powers of the *compromis* entered into by parties litigant, so that the former might be in a position to intervene in the case.

When they avail themselves of this opportunity the interpretation contained in the decision becomes equally binding on them.

Mr. ASSER drew up a provision along this line. It was unanimously adopted.

#### ARTICLE 57

Each party pays its own expenses and an equal share of the expenses of the tribunal.

[107] The question of the expenses of the operation of arbitral tribunals was regulated according to actual practice.

Each party bears, independently of its own expenses, an equal part of the expenses of the tribunal.

The honorariums of the arbitrators are included in the latter expenses.

There are some expenses which can only be determined in each case by the tribunal. For others the administrative council in case of need may adopt a schedule of charges. Custom will assist in establishing rules in this regard.



## GENERAL PROVISIONS

The Convention for the pacific settlement of international disputes contains under the title "General provisions" some final rules concerning ratification, adhesions and denunciations. The rules follow.

## ARTICLE 58

The present Convention shall be ratified as speedily as possible.

The ratifications shall be deposited at The Hague.

A *procès-verbal* shall be drawn up recording the receipt of each ratification, and a copy duly certified shall be sent, through the diplomatic channel, to all the Powers that were represented at the International Peace Conference at The Hague.

As Mr. Renault observed :

This article is only a reproduction of the provisions of the same character inserted in the Conventions concerning the laws and customs of war on land and the adaptation of the principles of the Geneva Convention to maritime warfare. They are identical and corresponding provisions.

[They comprise] the ordinary provisions regarding ratification. The form for the deposit of ratifications has, however, been simplified.

It was not necessary to make a reservation for the action of parliaments. Each sovereign or head of a State should decide to what extent he is free to ratify the Convention.

## ARTICLE 59

Non-signatory Powers which have been represented at the International Peace Conference may adhere to the present Convention. For this purpose they must make known their adhesion to the contracting Powers by a written notification addressed to the Netherland Government, and communicated by it to all the other contracting Powers.

## ARTICLE 60

The conditions on which the Powers which have not been represented at the International Peace Conference may adhere to the present Convention shall form the subject of a subsequent agreement between the contracting Powers.

Mr. RENAULT says, in the report of the Drafting Committee of the Final Act :

Articles 59 and 60 govern the matter of adhesion. They differ from the final clause of the other Conventions, which are absolutely *open* except for the slight difference which has already been indicated with respect to the Convention relating to the Red Cross.

The present Convention contemplates two different conditions: a distinction has been made between Powers represented at the Conference and those which are not. Articles 59 and 60 provide for these two conditions.

The Powers represented at The Hague have two methods of becoming contracting Parties: they may sign immediately, or before December 31, 1899. After that date, they will have to *adhere* to the Convention; but they have the *right* so to do. Their adhesion is subject to the same rules as those which govern the other two Conventions. This is the object of Article 59.

Article 60 provides for the case of Powers not represented at the Conference. Such Powers may adhere to the Convention, but the conditions of their adhesion are reserved for a future agreement between the contracting Powers. They,

therefore, have not the same right as is recognized with respect to the Powers represented.

This very simple solution was not reached in a very simple way. It gave rise to lively and lengthy discussions, which changed the modest character of the Drafting Committee and caused it to take up questions which were diplomatic and political rather than questions of style and wording. The reporter believes that he cannot better state the different systems which were upheld in [108] the committee than by repeating to the Conference the following address, delivered at the last session of the committee by Mr. ASSER, its president, which summarizes most completely the origin of Article 60:

GENTLEMEN: The discussions of international gatherings like our Conference assume at times the character of parliamentary debates, at others that of diplomatic negotiations.

In the matter with which the Drafting Committee has had to deal these last few days, our debates have assumed the latter character.

The result is that, on the one hand, the individual opinions of the members of our committee and of the delegates who have been good enough to lend us their aid are subject—still more than in discussions of a different nature—to the sanction of the Governments; and, on the other hand, to reach a practical result unanimity is indispensable.

If, from this double point of view, we consider the impression which the discussions of these last few days are bound to make, I believe I may state that all of us (delegates and Governments) desire that it may be possible to bring about adhesion to the Convention relating to the pacific settlement of international disputes by Powers who have not taken part in the Peace Conference; but that, at the same time, there exists a great difference of opinion as to whether the right to adhere should be granted absolutely or should be dependent upon certain conditions; and, in the latter case, what these conditions should be.

On the one hand, it was warmly argued that the Convention with which we are dealing should be completely assimilated to the other Conventions, the text of which has been decided upon by the Conference—which assimilation was, indeed, voted by the committee of examination of the Third Commission.

This implied the absolute right of all Powers to adhere to the Convention by means of a simple declaration.

On the other hand, it was maintained that this right should depend either on the express consent of all the contracting States, or on their tacit consent, which they would be considered to have given if, within a fixed time, no Power opposed the adhesion; or, lastly, on the consent of a majority, in the sense that the adhesion should, in case of opposition, be sanctioned by a vote of the Permanent Council, composed of all the diplomatic representatives of the Powers accredited to The Hague, a proposition which I had the honor of submitting to you, in the name of my Government, in order that no one Power might be given the right of veto in this matter.

Lastly, it was proposed that in case of opposition to the request for permission to adhere, the adhesion would affect only the Powers that had given their consent.

I cannot now repeat the arguments which were developed in favor of each of these systems.

I shall confine myself to stating that we have been unable to find a common ground for a unanimous agreement and that it is materially impos-

sible, in the short time we still have, to reach such an agreement, especially since several delegates have not received specific instructions upon this point.

There is nothing left for us to do, therefore, but to choose between the two following systems:

Either to omit purely and simply the clause concerning the adhesion of Powers not represented;

Or, admitting the principle of their right to adhere, to leave it for a future agreement between the Powers to determine the conditions under which adhesion may take place.

I venture to point out that it would appear from the discussions that the latter solution should be adopted.

It has been recognized by all that it is desirable to open the door to Powers that are not represented. If the Convention remained silent upon this point, it would by that very fact be a *closed* convention, a thing which we do not desire. If, on the contrary, it provides for a future agreement, such a provision is in effect an expression of the hope that this agreement can be brought about.

We are all persuaded that the Powers will endeavor to proceed with the greatest diligence, but we also know that ratifications cannot be obtained between to-day and to-morrow. Let us hope that the time which elapses between now and ratification by the Powers will serve to lessen the difficulties, which at present still exist, and that we shall be more and more convinced that the very nature of the Convention in question seems to admit of a broad and liberal system in the matter of the right to adhere.

The object of the Convention is the peaceful settlement of international [109] disputes, and it determines the means of assuring such a result.

Well! the authors of this Convention must necessarily desire that all Powers, even those which are not represented here, join in this work of general interest.

Now especially, since the Convention contains no clause concerning compulsory arbitration, they must desire that, in case of a dispute between Powers not represented at the Conference, or between one of them and a Power which is represented, the Convention may bear the same fruits as when there is a dispute between contracting Powers.

Mr. RENAULT says that "this speech is the best exposition of the reasons which he can make, and he will add nothing further to the comment which he has been authorized to make concerning the form and the bases of the initial and final clauses of the Conventions."

#### ARTICLE 61

In the event of one of the high contracting Parties denouncing the present Convention, this denunciation would not take effect until a year after its notification made in writing to the Netherlands Government, and by it communicated at once to all the other contracting Powers.

This denunciation shall have effect only in regard to the notifying Power.

The possibility of the denunciation of the Convention by some State has been provided for, especially with a view to preventing any immediate and far-reaching consequences therefrom. Of the same clause inserted in the Convention concerning the laws and customs of war, Mr. RENAULT spoke in these words:

In order to avoid surprises we have decided to determine the procedure for denunciation by a clause which tends rather to restrict the consequences

than to encourage the practice thereof. Besides, States will only the more freely adhere to a contractual engagement from which they know in advance that they may withdraw at a given time in case of need, without giving to the denunciation the almost violent character which it would seem to possess in the absence of a special provision.

Two declarations of a general character were made concerning the Convention, one by the delegation from the United States of America, and one by the Ottoman delegation.

*Declaration of the United States of America*

The delegation of the United States of America, on signing the Convention for the pacific settlement of international disputes, as proposed by the International Peace Conference, makes the following declaration:

Nothing contained in this Convention shall be so construed as to require the United States of America to depart from its traditional policy of not intruding upon, interfering with, or entangling itself in the political questions or policy or internal administration of any foreign State; nor shall anything contained in the said Convention be construed to imply a relinquishment by the United States of America of its traditional attitude toward purely American questions.

*Declaration of the Ottoman delegation*

The Ottoman delegation, considering that the work of this Conference has been a work of high loyalty and humanity, destined solely to assure general peace by safeguarding the interests and the rights of each one, declares, in the name of its Government, that it adheres to the project just adopted, on the following conditions:

1. It is formally understood that recourse to good offices and mediation, to commissions of inquiry and arbitration, is purely facultative and could not in any case assume an obligatory character or degenerate into intervention.

2. The Imperial Government itself will be the judge of the cases where its interests would permit it to admit these methods without its abstention or refusal to have recourse to them being considered by the signatory States as an unfriendly act.

It goes without saying that in no case could the means in question be applied to questions concerning interior regulation.

[110] The reporter has completed his task. In the few hours allotted to him to accomplish his work he has not been able to be as complete as he would have desired. He has nevertheless endeavored to be exact.

The minutes wherein the eminent secretary of the committee of examination has recorded so many remarkable debates have made the reporter's task easier. The cooperation of such distinguished and devoted members of the general secretarial staff has also contributed to the lightening of his work.

In glancing over the grand total of the work accomplished by it, the Third Commission may credit itself with having pursued the noblest and highest purpose in a spirit which has constantly maintained itself on a plane coequal with this high purpose.

The maintenance of general peace by the loyal cooperation of all; good offices and mediation developed into a powerful instrument for the preservation or reestablishment of peaceful relations; international commissions of inquiry regulated under conditions which safeguard liberty and give important guarantees; arbitral justice broadly recognized without being imposed; a Permanent Court of Arbitration established and attached to the International Bureau at The Hague and to a Permanent Council composed of the diplomatic representatives of the Powers; arbitral procedure defined and generalized in its fundamental principles: such a work surely answers the highest aspirations of our age.

When we search the history of the law of nations, from the day when this law was established upon a firm basis by that man of genius to whom America has recently rendered striking homage upon his native soil; when we search for some page comparable with that which the Hague Conference is going to write, it seems difficult to find a more fruitful one.

It is just to credit this honor to the magnanimous author of this Conference, His Majesty the Emperor of Russia.

The work undertaken upon his high initiative and under the gracious auspices of Her Majesty the Queen of the Netherlands, will develop in the future. As the president of the Third Commission said on a memorable occasion, "the farther we advance along the pathway of our age, the more clearly its importance will appear."

History will bear witness to the Hague Conference, because that great assembly will have worked sincerely and effectively to establish and organize peace through justice.

### Text Submitted to the Conference<sup>1</sup>

His Majesty the German Emperor, King of Prussia; His Majesty the Emperor of Austria, King of Bohemia, etc., and Apostolic King of Hungary; His Majesty the King of the Belgians; His Majesty the Emperor of China; His Majesty the King of Denmark; His Majesty the King of Spain and in His Name Her Majesty the Queen Regent of the Kingdom; the President of the United States of America; the President of the United Mexican States; the President of the French Republic; Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India; His Majesty the King of the Hellenes; His Majesty the King of Italy; His Majesty the Emperor of Japan; His Royal Highness the Grand Duke of Luxemburg, Duke of Nassau; His Highness the Prince of Montenegro; Her Majesty the Queen of the Netherlands; His Imperial Majesty the Shah of Persia; His Majesty the King of Portugal and of the Algarves, etc.; His Majesty the King of Roumania; His Majesty the Emperor of All the Russias; His Majesty the King of Serbia; His Majesty the King of Siam; His Majesty the King of Sweden and Norway; the Swiss Federal Council; His Majesty the Emperor of the Ottomans and His Royal Highness the Prince of Bulgaria;

Animated by a strong desire to work for the maintenance of general peace;

<sup>1</sup> This text was accepted without modifications. To Articles 1 to 57, first adopted, have been added the preamble and Articles 58-61 concerning ratifications, adhesions, and denunciations.

Resolved to promote by their best efforts the friendly settlement of international disputes;

Recognizing the solidarity uniting the members of the society of civilized nations;

Desirous of extending the empire of law, and of strengthening the appreciation of international justice;

[111] Convinced that the permanent institution of a tribunal of arbitration, accessible to all, in the midst of the independent Powers, will contribute effectively to this result;

Having regard to the advantages attending the general and regular organization of the procedure of arbitration;

Sharing the opinion of the august initiator of the International Peace Conference that it is expedient to record in an international agreement the principles of equity and right on which are based the security of States and the welfare of peoples;

Being desirous of concluding a Convention to this effect, have appointed as their plenipotentiaries, etc.

Who, after having communicated their full powers, found in good and due form, have agreed on the following provisions:

## PART I.—THE MAINTENANCE OF GENERAL PEACE

### ARTICLE 1

With a view to obviating as far as possible, recourse to force in the relations between States, the signatory Powers agree to use their best efforts to ensure the pacific settlement of international differences.

## PART II.—GOOD OFFICES AND MEDIATION

### ARTICLE 2

In case of serious disagreement or dispute, before an appeal to arms, the signatory Powers agree to have recourse, as far as circumstances allow, to the good offices or mediation of one or more friendly Powers.

### ARTICLE 3

Independently of this recourse, the signatory Powers deem it expedient that one or more Powers, strangers to the dispute, should, on their own initiative, and as far as circumstances may allow, offer their good offices or mediation to the States at variance.

Powers strangers to the dispute have the right to offer good offices or mediation, even during the course of hostilities.

The exercise of this right can never be regarded by either of the parties in dispute as an unfriendly act.

### ARTICLE 4

The part of the mediator consists in reconciling the opposing claims and appeasing the feelings of resentment which may have arisen between the States at variance.

## ARTICLE 5

The functions of the mediator are at an end when once it is declared, either by one of the parties to the dispute, or by the mediator himself, that the means of reconciliation proposed by him are not accepted.

## ARTICLE 6

Good offices and mediation, undertaken either at the request of the parties in dispute, or on the initiative of Powers strangers to the dispute, have exclusively the character of advice and never have binding force.

## ARTICLE 7

The acceptance of mediation cannot, unless there be an agreement to the contrary, have the effect of interrupting, delaying, or hindering mobilization or other measures of preparation for war.

It if takes place after the commencement of hostilities, the military operations in progress are not interrupted, unless there be an agreement to the contrary.

## ARTICLE 8

The signatory Powers are agreed in recommending the application, when circumstances allow, of special mediation in the following form:

[112] In case of a serious difference endangering the peace, the States at variance choose respectively a Power to which they entrust the mission of entering into direct communication with the Power chosen on the other side, with the object of preventing the rupture of pacific relations.

For the period of this mandate, the term of which, unless otherwise stipulated, can not exceed thirty days, the States in dispute cease from all direct communication on the subject of the dispute, which is regarded as referred exclusively to the mediating Powers, which must use their best efforts to settle it.

In case of a definite rupture of pacific relations, these Powers are charged with the joint task of taking advantage of any opportunity to restore peace.

## PART III.—INTERNATIONAL COMMISSIONS OF INQUIRY

## ARTICLE 9

In disputes of an international nature involving neither honor nor essential interests, and arising from a difference of opinion on points of fact, the signatory Powers deem it expedient that the parties who have not been able to come to an agreement by means of diplomacy, should, as far as circumstances allow, institute an international commission of inquiry, to facilitate a solution of these disputes by elucidating the facts by means of an impartial and conscientious investigation.

## ARTICLE 10

The international commissions of inquiry are constituted by special agreement between the parties in dispute.

The inquiry convention defines the facts to be examined and the extent of the powers of the commissioners.

It settles the procedure.

At the inquiry both sides must be heard.

The form and the periods to be observed, if not stated in the inquiry convention are decided by the commission itself.

#### ARTICLE 11

International commissions of inquiry are formed, unless otherwise stipulated, in the manner determined by Article 32 of the present Convention.

#### ARTICLE 12

The Powers in dispute undertake to supply the international commission of inquiry, as fully as they may think possible, with all means and facilities necessary to enable it to become completely acquainted with and to accurately understand the facts in question.

#### ARTICLE 13

The international commission of inquiry communicates its report to the Powers in dispute, signed by all the members of the commission.

#### ARTICLE 14

The report of the international commission of inquiry is limited to a finding of facts, and has in no way the character of an award. It leaves to the Powers in dispute entire freedom as to the effect to be given to this finding.

### PART IV.—INTERNATIONAL ARBITRATION

#### CHAPTER I.—*The system of arbitration*

#### ARTICLE 15

International arbitration has for its object the settlement of disputes between States by judges of their own choice and on the basis of respect for law.

#### ARTICLE 16

In questions of a legal nature, and especially in the interpretation or application of international conventions, arbitration is recognized by the signatory Powers as the most effective and at the same time the most equitable means of settling disputes which diplomacy has failed to settle.

#### ARTICLE 17

The arbitration convention is concluded for questions already existing or for questions which may arise eventually.

It may embrace any dispute or only disputes of a certain category.

#### ARTICLE 18

The arbitration convention implies an engagement to submit in good faith to the arbitral award.

#### ARTICLE 19

Independently of general or private treaties expressly stipulating recourse to arbitration as obligatory on the signatory Powers, these Powers reserve to them-



selves the right of concluding, either before the ratification of the present act or later, new agreements, general or private, with a view to extending obligatory arbitration to all cases which they may consider it possible to submit to it.

## CHAPTER II.—*The Permanent Court of Arbitration*

### ARTICLE 20

With the object of facilitating an immediate recourse to arbitration for international differences which it has not been possible to settle by diplomacy, the signatory Powers undertake to organize a Permanent Court of Arbitration, accessible at all times and operating, unless otherwise stipulated by the parties, in accordance with the rules of procedure inserted in the present Convention.

### ARTICLE 21

The Permanent Court shall be competent for all arbitration cases, unless the parties agree to institute a special tribunal.

### ARTICLE 22

An International Bureau, established at The Hague, serves as registry for the Court.

This Bureau is the channel for communications relative to the meetings of the Court.

It has the custody of the archives and conducts all the administrative business.

The signatory Powers undertake to communicate to the International Bureau at The Hague a duly certified copy of any conditions of arbitration arrived at between them and of any award concerning them delivered by a special tribunal.

They undertake likewise to communicate to the Bureau the laws, regulations, and documents eventually showing the execution of the awards given by the Court.

### ARTICLE 23

Within the three months following its ratification of the present act, each signatory Power shall select four persons at the most, of known competency in questions of international law, of the highest moral reputation, and disposed to accept the duties of arbitrators.

The persons thus selected shall be inscribed, as members of the Court, in a list which shall be notified to all the signatory Powers by the Bureau.

Any alteration in the list of arbitrators is brought by the Bureau to the knowledge of the signatory Powers.

Two or more Powers may agree on the selection in common of one or more members.

The same person can be selected by different Powers.

The members of the Court are appointed for a term of six years. Their appointments can be renewed.

In case of the death or retirement of a member of the Court, his place is filled in the same way as he was appointed.

[114]

## ARTICLE 24

When the signatory Powers wish to have recourse to the Permanent Court for the settlement of a difference that has arisen between them, the arbitrators called upon to form the tribunal competent to decide this difference must be chosen from the general list of members of the Court.

Failing the composition of the arbitration tribunal by direct agreement of the parties, the following course is pursued:

Each party appoints two arbitrators, and these together choose an umpire.

If the votes are equally divided, the choice of the umpire is entrusted to a third Power, selected by the parties by common accord.

If an agreement is not arrived at on this subject, each party selects a different Power, and the choice of the umpire is made in concert by the Powers thus selected.

The tribunal being thus composed, the parties notify to the Bureau their determination to have recourse to the Court and the names of the arbitrators.

The tribunal of arbitration assembles on the date fixed by the parties.

The members of the Court, in the performance of their duties and out of their own country, enjoy diplomatic privileges and immunities.

## ARTICLE 25

The tribunal of arbitration sits ordinarily at The Hague.

Except in cases of necessity, the place of session can only be altered by the tribunal with the assent of the parties.

## ARTICLE 26

The International Bureau at The Hague is authorized to place its premises and staff at the disposal of the signatory Powers for the use of any special board of arbitration.

The jurisdiction of the Permanent Court may, within the conditions laid down in the regulations, be extended to disputes between non-signatory Powers, or between signatory Powers and non-signatory Powers, if the parties are agreed to have recourse to this tribunal.

## ARTICLE 27

The signatory Powers consider it their duty, if a serious dispute threatens to break out between two or more of them, to remind these latter that the Permanent Court is open to them.

Consequently, they declare that the fact of reminding the parties at variance of the provisions of the present Convention, and the advice given to them, in the highest interests of peace, to have recourse to the Permanent Court, can only be regarded in the nature of good offices.

## ARTICLE 28

A Permanent Administrative Council, composed of the diplomatic representatives of the signatory Powers accredited to The Hague and of the Netherland Minister for Foreign Affairs, who will act as president, shall be instituted in this town as soon as possible after the ratification of the present act by at least nine Powers.

This Council will be charged with the establishment and organization of the International Bureau, which will be under its direction and control.

It will notify to the Powers the constitution of the Court and will provide for its installation.

It will settle its rules of procedure and all other necessary regulations.

It will decide all questions of administration which may arise with regard to the operations of the Court.

It will have entire control over the appointment, suspension or dismissal of the officials and employees of the Bureau.

It will fix the payments and salaries, and control the general expenditure.

At meetings duly summoned the presence of five members is sufficient to render valid the discussions of the Council. The decisions are taken by a majority of votes.

The Council communicates to the signatory Powers without delay the regulations adopted by it. It addresses to them an annual report on the labors of the Court, the working of the administration, and the expenditure.

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## ARTICLE 29

The expenses of the Bureau shall be borne by the signatory Powers in the proportion fixed for the International Bureau of the Universal Postal Union.

CHAPTER III.—*Arbitration procedure*

## ARTICLE 30

With a view to encouraging the development of arbitration, the signatory Powers have agreed on the following rules which shall be applicable to arbitration procedure, unless other rules have been agreed on by the parties.

## ARTICLE 31

The Powers which have recourse to arbitration sign a special act (*compromis*), in which are clearly defined the subject of the dispute and the extent of the arbitrators' powers. This act implies an engagement of the parties to submit in good faith to the arbitral award.

## ARTICLE 32

The duties of arbitrator may be conferred on one arbitrator alone or on several arbitrators selected by the parties as they please, or chosen by them from the members of the Permanent Court of Arbitration established by the present act.

Failing the composition of the tribunal by direct agreement of the parties, the following course is pursued:

Each party appoints two arbitrators, and these together choose an umpire.

If the votes are equally divided the choice of the umpire is entrusted to a third Power, selected by the parties by common accord.

If an agreement is not arrived at on this subject, each party selects a different Power, and the choice of the umpire is made in concert by the Powers thus selected.

## ARTICLE 33

When a sovereign or the chief of a State is chosen as arbitrator, the arbitration procedure is settled by him.

## ARTICLE 34

The umpire is *ex officio* president of the tribunal.

When the tribunal does not include an umpire, it appoints its own president.

## ARTICLE 35

In case of the death, retirement, or disability from any cause of one of the arbitrators, his place is filled in the same way as he was appointed.

## ARTICLE 36

The tribunal's place of session is selected by the parties. Failing this selection the tribunal sits at The Hague.

The place thus fixed can not, except in case of necessity, be altered by the tribunal without the assent of the parties.

## ARTICLE 37

The parties are entitled to appoint delegates or special agents to attend the tribunal to act as intermediaries between themselves and the tribunal.

They are further authorized to commit the defense of their rights and interests before the tribunal to counsel or advocates appointed by them for this purpose.

## ARTICLE 38

The tribunal decides on the choice of languages to be used by itself, and to be authorized for use before it.

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## ARTICLE 39

As a general rule arbitration procedure comprises two distinct phases: pleadings and oral discussions.

The pleadings consist in the communication by the respective agents to the members of the tribunal and the opposite party of all printed or written acts and of all documents containing the grounds relied on in the case. This communication shall be made in the form and within the time fixed by the tribunal in accordance with Article 49.

The discussions consist in the oral development before the tribunal of the arguments of the parties.

## ARTICLE 40

Every document produced by one party must be communicated to the other party.

## ARTICLE 41

The discussions are under the direction of the president.

They are only public if it be so decided by the tribunal, with the assent of the parties.

They are recorded in minutes drawn up by the secretaries appointed by the president. These minutes alone have an authentic character.

#### ARTICLE 42

After the close of the pleadings, the tribunal is entitled to refuse discussion of all new papers or documents which one of the parties may wish to submit to it without the consent of the other party.

#### ARTICLE 43

The tribunal is free to take into consideration new papers or documents to which its attention may be drawn by the agents or counsel of the parties.

In this case, the tribunal has the right to require the production of these papers or documents, but is obliged to make them known to the opposite party.

#### ARTICLE 44

The tribunal can, besides, require from the agents of the parties the production of all papers, and can demand all necessary explanations. In case of refusal, the tribunal takes note of it.

#### ARTICLE 45

The agents and counsel of the parties are authorized to present orally to the tribunal all the arguments they may consider expedient in defense of their case.

#### ARTICLE 46

They are entitled to raise objections and points. The decisions of the tribunal on these points are final, and cannot form the subject of any subsequent discussion.

#### ARTICLE 47

The members of the tribunal are entitled to put questions to the agents and counsel of the parties, and to ask them for explanations on doubtful points.

Neither the questions put, nor the remarks made by members of the tribunal in the course of the discussions can be regarded as an expression of opinion by the tribunal in general, or by its members in particular.

#### ARTICLE 48

The tribunal is authorized to declare its competence in interpreting the *compromis* as well as the other treaties which may be invoked in the case, and in applying the principles of international law.

#### ARTICLE 49

The tribunal is entitled to issue rules of procedure for the conduct of the case, to decide the forms and time in which each party must conclude its arguments, and to arrange all the formalities required for dealing with the evidence.

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#### ARTICLE 50

When the agents and counsel of the parties have submitted all the explanations and evidence in support of their case, the president pronounces the discussion closed.

## ARTICLE 51

The deliberations of the tribunal take place in private. Every decision is taken by a majority of members of the tribunal.

The refusal of a member to vote must be recorded in the minutes.

## ARTICLE 52

The award, given by a majority of votes, must state the reasons on which it is based. It is drawn up in writing and signed by each member of the tribunal.

Those members who are in the minority may record their dissent when signing.

## ARTICLE 53

The award is read out at a public sitting of the tribunal, the agents and counsel of the parties being present, or duly summoned to attend.

## ARTICLE 54

The award, duly pronounced and notified to the agents of the parties at variance, settles the dispute definitively and without appeal.

## ARTICLE 55

The parties can reserve in the *compromis* the right to demand the revision of the award.

In this case, and unless there be an agreement to the contrary, the demand must be addressed to the tribunal which pronounced the award. It can only be made on the ground of the discovery of some new fact which is of a nature to exercise a decisive influence upon the award and which, at the time the discussion was closed, was unknown to the tribunal and to the party demanding the revision.

Proceedings for revision can only be instituted by a decision of the tribunal expressly recording the existence of the new fact, recognizing in it the character described in the preceding paragraph, and declaring the demand admissible on this ground.

The *compromis* fixes the period within which the demand for revision must be made.

## ARTICLE 56

The award is binding only on the parties who concluded the *compromis*.

When there is a question as to the interpretation of a convention to which Powers other than those in dispute are parties, the latter notify to the former the *compromis* they have concluded. Each of these Powers is entitled to intervene in the case. If one or more avail themselves of this right, the interpretation contained in the award is equally binding on them.

## ARTICLE 57

Each party pays its own expenses and an equal share of the expenses of the tribunal.

## GENERAL PROVISIONS

## ARTICLE 58

The present Convention shall be ratified as speedily as possible.

The ratifications shall be deposited at The Hague.

A *procès-verbal* shall be drawn up recording the receipt of each ratification and a copy duly certified shall be sent, through the diplomatic channel, to all the Powers that were represented at the International Peace Conference at The Hague.

#### ARTICLE 59

Non-signatory Powers which have been represented at the International Peace Conference may adhere to the present Convention. For this purpose [118] they must make known their adhesion to the contracting Powers by a written notification addressed to the Netherland Government, and communicated by it to all the other contracting Powers.

#### ARTICLE 60

The conditions on which the Powers which have not been represented at the International Peace Conference may adhere to the present Convention shall form the subject of a subsequent agreement between the contracting Powers.

#### ARTICLE 61

In the event of one of the high contracting Parties denouncing the present Convention, this denunciation would not take effect until a year after its notification made in writing to the Netherland Government, and by it communicated at once to all the other contracting Powers.

This denunciation shall have effect only in regard to the notifying Power.

In faith of which the plenipotentiaries have signed the present Convention and have affixed their seals thereto.

Done at The Hague, July 29, 1899, in a single original, which shall remain deposited in the archives of the Netherland Government, and copies of which, duly certified, shall be sent through the diplomatic channel to the contracting Powers.

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### [119] Annexes to the Report upon the Convention for the Pacific Settlement of International Disputes

#### ANNEX A. DOCUMENTS PRODUCED BY THE RUSSIAN DELEGATION

#### I.—OUTLINES FOR THE PREPARATION OF A DRAFT CONVENTION TO BE CONCLUDED BETWEEN THE POWERS TAKING PART IN THE HAGUE CONFERENCE

#### *Good offices and mediation*

#### ARTICLE 1

With the purpose of obviating, as far as possible, recourse to force in international relations, the signatory Powers have agreed to use their best efforts to

bring about by pacific means the settlement of disputes which may arise between them.

#### ARTICLE 2

Consequently, the signatory Powers have decided that, in case of serious disagreement or dispute, before an appeal to arms, they will have recourse, so far as circumstances admit, to the good offices or mediation of one or more friendly Powers.

#### ARTICLE 3

In the case of mediation accepted spontaneously by the States at variance, the object of the Government acting as mediator is to reconcile the opposing claims and appease the feelings of resentment which may have arisen between these States.

#### ARTICLE 4

The part of the Government acting as mediator is at an end when the settlement proposed by it or the bases of a friendly settlement which it may have suggested are not accepted by the States at variance.

#### ARTICLE 5

The Powers consider it useful in case of serious disagreement or conflict between civilized States concerning questions of a political nature, independently of the recourse which these Powers might have to the good offices and mediation of Powers not involved in the dispute, for the latter, on their own initiative and so far as circumstances will allow, to offer their good offices or their mediation in order to smooth away the difficulty which has arisen, by proposing a friendly settlement, which without affecting the interest of other States, might be of such a nature as to reconcile in the best way possible the interests of the parties to the dispute.

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#### ARTICLE 6

It is of course understood that mediation and good offices, undertaken either on the initiative of the litigant parties or upon that of the neutral Powers, have strictly the character of friendly advice and no binding force whatever.

### *International arbitration*

#### ARTICLE 7

With regard to those controversies concerning legal questions, and especially with regard to those concerning the interpretation or application of treaties in force, arbitration is recognized by the signatory Powers as being the most effective and at the same time the most equitable means for the friendly settlement of these disputes.

#### ARTICLE 8

The contracting Powers consequently agree to have recourse to arbitration in cases involving questions of the character above mentioned, so far as they do not concern the vital interest or national honor of the parties in dispute.



## ARTICLE 9

Each State remains the sole judge of whether this or that case should be submitted to arbitration, excepting those enumerated in the following article, in which case the signatory Powers to the present document consider arbitration as obligatory upon them.

## ARTICLE 10

Upon the ratification of the present document by all the signatory Powers, arbitration will be obligatory in the following cases, so far as they do not concern the vital interests nor national honor of the contracting States:

I. In case of differences or disputes relating to pecuniary damages suffered by a State, or its nationals, as a consequence of illegal actions or negligence on the part of another State or its nationals:

II. In case of disagreement relating to the interpretation or application of the treaties and conventions mentioned below:

1. Treaties and conventions relating to the posts and telegraphs, railroads, and also those bearing upon the protection of submarine telegraph cables; regulations concerning methods to prevent collisions of vessels on the high seas; conventions relating to the navigation of international rivers and interoceanic canals.

2. Conventions concerning the protection of literary and artistic property as well as industrial property (patents, trade-marks, and trade-names); conventions relating to money and measures; conventions relating to sanitation and veterinary surgery, and for the prevention of phylloxera.

3. Conventions relating to inheritance, exchange of prisoners, and reciprocal assistance in the administration of justice.

4. Conventions for marking boundaries, so far as they concern purely technical and non-political questions.

## ARTICLE 11

The enumeration of the cases mentioned in the above article may be completed by subsequent agreements between the signatory Parties of the present act.

Besides, each of them may enter into a special agreement with any other Power, with a view to making arbitration obligatory in the above cases before general ratification, as well as to extend the scope thereof to all cases which the State may deem it possible to submit to arbitration.

## ARTICLE 12

In all other cases of international disputes, not mentioned in the above articles, arbitration, while certainly very desirable and recommended by the present act, is only voluntary; that is to say, it cannot be resorted to except upon the suggestion of one of the parties in litigation, made of its own accord and with the express consent and full agreement of the other party or parties.

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## ARTICLE 13

With a view to facilitating recourse to arbitration and its application, the signatory Powers have agreed to define by common agreement the fundamental

principles to be observed by the institution, and the rules of procedure to be followed during the examination of the dispute and the delivery of the arbitral decision in cases of international arbitration.

The application of these fundamental principles, as well as of arbitral procedure, indicated in the appendix to the present article, may be modified by a special agreement between the States which resort to arbitration.

### *International commissions of inquiry*

#### ARTICLE 14

In cases which may arise between the signatory States where differences of opinion with regard to local circumstances have given rise to a dispute of an international character which cannot be settled through the ordinary diplomatic channels, but wherein neither the honor nor the vital interests of these States is involved, the interested Governments agree to form an international commission of inquiry in order to ascertain the circumstances forming the basis of the disagreement and to elucidate all the facts of the case on the spot by means of an impartial and conscientious investigation.

#### ARTICLE 15

These international commissions are formed as follows:

Each interested Government names two members and the four members together choose the fifth member, who is also the president of the commission. In case of equal voting for the selection of a president, the two interested Governments by common agreement address a third Government or a third person, who shall name the president of the commission.

#### ARTICLE 16

The Governments between which a serious disagreement or a dispute under the conditions above indicated has arisen, undertake to supply the commission of inquiry with all means and facilities necessary to a thorough and conscientious study of the facts in the case.

#### ARTICLE 17

The international commission of inquiry, after having stated the circumstances under which the disagreement or dispute has arisen, communicates its report to the interested Governments, signed by all the members of the commission.

#### ARTICLE 18

The report of the international commission of inquiry has in no way the character of an award; it leaves the disputing Governments entire freedom either to conclude a settlement in a friendly way on the basis of the above-mentioned report, or to resort to arbitration by concluding an agreement *ad hoc*, or finally, to resort to such use of force as is accepted in international relations.

## II.—EXPLANATORY NOTES CONCERNING ARTICLES 5 AND 10 OF THE ABOVE OUTLINES FOR THE PREPARATION OF A DRAFT CONVENTION

### (a) EXPLANATORY NOTE CONCERNING ARTICLE 5 OF THE RUSSIAN DRAFT

The Conference which is about to meet at The Hague is essentially different from those which were held in Geneva (in 1864), at St. Petersburg (in 1868), and at Brussels (in 1874).

These early conferences intended to humanize war after war had been declared; while the assembly convoked at The Hague must devote itself especially to the discovery of methods to prevent the very declaration of war. The Hague Conference therefore must be a *Peace* Conference in the most positive sense of the term.

Practice in international law has worked out a complete set of methods to prevent war by the pacific settlement of international disputes, and among [122] these must be set, above all, good offices, mediation and arbitration. It seems very natural that the Conference should consider the perfecting of the guaranties and methods already existing for the assurance of lasting peace among nations, instead of seeking new means which have not been tried and sanctioned by practice. With this in mind the Conference should especially give its attention to "good offices" and "mediation" by third parties; that is, by Powers which are not involved in the conflict presumed to exist.<sup>1</sup>

Mediation should doubtless be, from its very nature, placed among the most useful and practical methods in the law of nations. Being a necessary response to that real community of material and moral interests which creates an international union among the various States, mediation should inevitably acquire a continually increasing importance and value, in proportion to the increasing intimacy among States and the development of their international relations. The possible advantage of mediation, if we compare it with the other methods used to settle international disputes, is especially the remarkable elasticity of its operation, the ease with which it is adapted to the particular circumstances of each given case, as well as the variety of forms arising from this ease of adaptation. Being dependent upon the free consent of the parties, mediation does not in the least threaten the principle of their sovereignty nor the liberty or independence of States; it *influences* the arbitrator freely chosen by them without ever opposing him, without ever calling him in question.

There is no doubt that arbitration, generally speaking, is a more effective and more radical method than mediation; but arbitration being of a legal nature, its application is essentially and even exclusively restricted to cases where there is a conflict of international rights, while mediation, although of a political character, is equally applicable to the conflicts of interests which most often threaten peace among nations. Finally, it is equally essential to note that mediation is distinguished from other analogous modes of action by an astonishing simplicity of application which demands no previous preparation whatever. This instrument, in daily use in diplomacy, tactfully and skillfully handled and guided

<sup>1</sup> The distinction made between "good offices" and "mediation" is entirely theoretical. These methods are legally identical in character and differ only in degree and the importance of their results. Diplomacy has never insisted upon this distinction. (Cf. Article 9 of the Treaty of Paris of 1856, and Article 23 of the protocol of the Congress of Paris, 1856.)

by a sincere desire to serve in the work of peace, seems called upon to play a striking and beneficent rôle in the future.

However, mediation has up to the present played a most modest rôle in the settlement of international difficulties; this statement is supported by the history of even the most recent disputes.

If we look for the reason for this fact, we must consider first how unsatisfactory is the status of mediation in the theory as well as in the practice of international law.

By the terms of Article 8 of the Treaty of Paris the Sublime Porte, as well as the other signatory Powers to that treaty, is bound to submit every future disagreement which may arise between any of them to the mediation of the other Powers, to prevent the use of force.

Giving this idea a more general scope, Article 23 of the protocol of the Congress of Paris, inserted at the suggestion of Lord Clarendon, British plenipotentiary, expresses the desire that States between which serious disagreements may arise shall request the good offices of a friendly Power so far as circumstances permit rather than resort to arms.

In the same way, at the African Conference at Berlin, in 1885, the Powers mutually agreed to resort first of all to mediation by one or several neutral States in case disagreement arose between them concerning the Kongo and its basin.

The provisions above set forth are inspired by one and the same thought expressed in almost identical terms. They oblige all the States interested in the dispute to *request* mediation; they do not mention the duty of neutrals to *propose* it. From this point of view mediation imposes duties upon the States directly interested but not upon neutral States.

This sort of mediation, very irregular from a theoretical point of view, has also the disadvantage of making mediation unattainable from a practical point of view. The request for mediation necessarily presupposes a previous agreement between the interested States with regard to the necessity and the [123] opportunity for it. Now, such an agreement is not always possible in the heat of a dispute between interests diametrically opposed to each other. In any case we cannot consider the making of the request for mediation *obligatory* on the part of the States whose interests are in question, especially since that requires that opposing desires be harmonized and that the parties agree in the choice of a mediator.

Treaties, unhappily still less numerous, which make the request for arbitration obligatory, at the same time regulate, and generally in advance, the organization of the tribunal called upon to render the arbitral decision, without making this organization dependent upon the consent or dissent of the interested parties.<sup>1</sup>

It goes without saying that treaties cannot deal with the obligation of parties to choose a mediator, whose advice could be only of moral effect proportionate to the respect and confidence which he inspired in the interested parties. The designation of mediators must necessarily be brought about by the agreement of the parties; now, since this agreement depends absolutely upon their good-will, and may, even if this good-will is secured, be unattainable, it follows that we should not consider the request for mediation as obligatory upon the States

<sup>1</sup> See, for example, Article 16 of the General Postal Convention signed at Berne in 1874, and Article 8 of the treaty signed at Washington in 1890.

directly interested. Even if the treaties did impose such a duty upon States, in case of a dispute this duty would still be, generally speaking, ineffective, because conventions could not oblige States, in spite of everything, to agree upon this or that mediator.

This view is confirmed by the history of international relations since the Congress of Paris, 1856. Thus within the last forty years there have been several cases where neutral States, referring to Article 23 of the protocol of the Congress of Paris, have *offered* their mediation and good offices to States in controversy; but there *has not been a single* case where the States in controversy have *addressed* a request for mediation to neutral States. Last year, at the time of the dispute between France and England concerning Fashoda, neither one nor the other of these Powers thought of resorting to the provisions adopted at the Conference at Berlin in 1885, and did not appeal to the mediation of a third Power. We might cite other examples of a similar character.

As for the obligation of neutral States to offer mediation to States in controversy when not established by treaty, this is not recognized nor observed by any one. In theory, too, some authors have gone so far as to assert that neutral States are not only not obliged to offer mediation to disputing States, but that they have not the right to do so. BLUNTSCHLI and HEFFTER consider mediation as a dangerous and injurious interference in the affairs of others. HAUTEFEUILLE and GALIANI advise States prudently to abstain from mediation, fearing to alienate the sympathies of one or other of the parties in controversy without justification. In short, we might cite, as a matter of practice, a number of examples of serious disputes, which later ended in war, which did not suggest to neutrals the least idea of attempting to offer mediation; however, proposals of this character, especially in cases where they might have come simultaneously from several Powers, could have prevented wars the effects of which have been incalculable upon all the States constituting the international community.

In many cases the offer of mediation comes so late and in such uncertain terms that it cannot prevent war. For example, such was the case when the French Government in 1870 refused the "good offices" of England when the war broke out between France and Germany.

Finally, it often happens that mediation is proposed not with the view to prevent war, but in order to end it.

Several recent wars—the Austro-Prussian War of 1866, that between Chile, Peru, and Bolivia in 1882, that between Greece and Turkey in 1897, and still others—were terminated thanks to the mediation of neutral Powers. If these same Powers had made use of all the energy they employed to *terminate* these wars in an effort to *prevent* them, it is possible that Europe would have been spared more than one armed conflict.

After what has just been said, it is not difficult to indicate the way for the Conference to increase the importance and enlarge the scope of mediation, by making it a permanent and necessary institution in international law. Innumerable reciprocal entangling interests envelop civilized States in a close and inextricable net. The principle of isolation, which but lately still dominated [124] the political life of each nation, has given way henceforth to a close solidarity of interests, to common participation in the moral and material benefits of civilization.

Modern States cannot stand indifferent to international conflicts wherever

they may arise and whoever may be the parties in controversy. At the present time, a war between even two States seems to be an international evil. To fight this evil it is necessary to employ methods of a general character; we must combine the efforts of each and every State.

From this point of view, each Power must employ its every effort to bring into action all its energies to prevent conflicts which threaten peace, while respecting, of course, the independence of other sovereign States. In particular, each State should, so far as circumstances allow, offer mediation to disputing States the moment it has the least hope of preventing thereby the terrible evils of war.

It is because they realize the serious consequences which one or another result of war may have for the international community, that neutral States ordinarily offer to the belligerent parties mediation for the conclusion of peace. Mediation of this character, generally collective, often makes it impossible for the victor to derive from his victories the advantages for which the war was undertaken.

The important fact, without doubt, so far as neutral States are concerned, is not merely the result of a war but the very fact that it has taken place. It follows that the interests of neutrals require that mediation should be proposed by them not only to end a war already begun, but above all to *prevent* the outbreak. This is also to the interest of the States in controversy, and all the more so since when war breaks out each belligerent State is interested to-day in knowing the attitude of the neutral Powers with regard to the conflict in order to be able to calculate and determine, not only the power of resistance of the adversary during the war, but also the pressure which will come from the neutral Powers at the conclusion of peace.

The theory of international law, as shown by its most highly respected representatives, such as TRAVERS TWISS, PHILLIMORE, PRADIER-FODÉRÉ, MARTENS, and others, has for a long time considered mediation as a *duty on the part of neutral States*. The Peace Conference will perhaps deem it useful to proclaim this duty before all humanity, so that mediation will be given the value of a powerful instrument for peace.

#### (b) EXPLANATORY NOTE CONCERNING ARTICLE 10 OF THE RUSSIAN DRAFT

In entering upon an examination of the question of arbitration, we must first of all bear in mind the essential difference between *obligatory* and *voluntary* arbitration.

As a general question, it is difficult to conceive of any dispute whatever of a legal character, arising in the field of positive international law, which could not *by virtue of agreement between the parties be decided* by means of voluntary international arbitration. Even in case international law, which unfortunately still contains so many gaps, does not furnish a generally recognized rule for the solution of the concrete question, the *compromis* concluded between the parties prior to the arbitration may, however, create a principle *ad hoc*, and in this way facilitate considerably the task of the arbitrator.

It is different with obligatory arbitration, which does not depend upon the special consent of the parties. It goes without saying that this form of arbitration cannot apply to all cases and all kinds of disputes. There is no Government

which would consent *in advance* to assume the obligation to submit to the decision of an arbitral tribunal every dispute which might arise in the international domain if it concerned the national honor of a State, or its highest interests, or its inalienable possessions. In fact, the mutual rights and duties of States are determined to a marked degree by the totality of what we call political treaties, which are nothing but the *temporary* expression of chance and transitory relationship between the various national forces. These treaties restrict the freedom of action of the parties so long as the political conditions under which they were produced are unchanged. Upon a change in these conditions the rights and obligations following from these treaties necessarily change also. As a general rule, disputes which arise in the field of political treaties in most cases concern not so much a difference of interpretation of this or that principle, as the changes to be made in the treaty, or the complete abrogation thereof.

Powers which take an active part in the politics of Europe cannot [125] therefore submit disputes arising in the field of political treaties to the examination of an arbitral tribunal, in whose eyes the principle established by the treaty would be just as obligatory, just as inviolable, as the principle established by the positive law in the eyes of any national tribunal whatever.

From the point of view of practical politics, the impossibility of universal obligatory arbitration seems evident.

But from another point of view, it cannot be doubted that in international life differences often arise which may absolutely and at all times be submitted to arbitration for solution; these are questions which concern exclusively special points of law and which do not touch upon the vital interests, or national honor of States. We do not desire that the Peace Conference should, so far as these questions are concerned, set up arbitration as the permanent and obligatory method.

The recognition of the obligatory character of arbitration, were it only within the most restricted limits, would strengthen legal principles in relations between nations, would guarantee them against infractions and encroachments; it would *neutralize*, so to speak, more or less, large fields of international law. For the States obligatory arbitration would be a convenient means of avoiding the misunderstandings, so numerous, so troublesome, although of little importance, which sometimes fetter diplomatic relations without any reason therefor. Thanks to obligatory arbitration, States could more easily maintain their legitimate claims, and what is more important still, could more easily escape from the unjustified demands.

Obligatory arbitration would be of invaluable service to the cause of universal peace. It is very evident that the questions of the second class, to which alone this method is applicable, very rarely form a basis for war. Nevertheless, frequent disputes between States, even though with regard only to questions of the second class, while not forming a direct menace to the maintenance of peace, nevertheless disturb the friendly relations between States and create an atmosphere of distrust and hostility in which some incident or other, like a chance spark, may more easily cause war to burst forth. Obligatory arbitration, resulting in absolving the interested States from all responsibility for any solution of the difference existing between them, seems to be fitted to contribute to the maintenance of friendly relations, and in that way to facilitate the peaceful settlement of

the most serious conflicts which may arise within the field of their most important mutual interests.

In thus recognizing the great importance of obligatory arbitration it is above all indispensable to set forth accurately the sphere of its application; we must indicate in what cases obligatory arbitration is applicable.

The grounds of international disputes are very numerous and infinitely varied; nevertheless, whatever may be the subject of dispute, demands made by any State whatever upon another State can be listed in the following categories:

1. One State demands of another material indemnity for damages and losses caused to it or to its nationals by the acts of the defendant State or its nationals, which the former State deems contrary to law.

2. A State demands that another shall or shall not exercise certain given attributes of the sovereign Power, shall or shall not perform certain specified acts which do not concern its material interests.

So far as disputes of the first category are concerned, the application of obligatory arbitration is always possible and desirable. Conflicts of this nature relate to questions of law; they do not concern the national honor of States or the vital interests thereof, it being understood that a State whose national honor or vital interests had been attacked would not of course limit itself, and could not limit itself, to demanding material indemnity for damages and losses suffered by it. War, which is always a highly regrettable thing, would lose its significance and would have no moral justification, if it were undertaken for a dispute arising in regard to facts of little real importance, such as accounts to be settled for material damages caused to one State by acts committed by another, and which the former did not consider in accordance with law. But the more impossible war becomes in such cases, the more indispensable it is to recommend obligatory arbitration as the most effective means of action for a peaceful solution of disputes of this character.

The history of international relations proves beyond doubt that in the great majority of cases claims for indemnity for damages suffered have actually been the subject of arbitrations. The bases of these demands vary a great deal. [126] We mention, for example, the violation of neutral duties,<sup>1</sup> violation of the rights of neutral States,<sup>2</sup> the illegal arrest of a foreign subject,<sup>3</sup> losses caused to a foreign national through the fault of a State,<sup>4</sup> seizure of private property of a belligerent upon land,<sup>5</sup> illegal seizure of vessels,<sup>6</sup> violation of the right of fishery.<sup>7</sup>

In general, whatever may be the bases or circumstances of the dispute, States cannot find any difficulty in submitting it to arbitration if it deals with an indemnity for damages and losses.

It would seem therefore that the Conference should follow the same path, by declaring arbitration obligatory for the examination of disputes of the first

<sup>1</sup> The case of the *General Armstrong* (1881); the case of the *Alabama* (1872).

<sup>2</sup> Blockade of Portendik (1843), etc.

<sup>3</sup> The case of Captain White (1864); the case of Dundonald (1873), etc.

<sup>4</sup> Butterfield case (1888); dispute between Mexico and the United States (1872), etc.

<sup>5</sup> Case of the *Macedonian*.

<sup>6</sup> Seizure of the vessels *Velox Mariana*, *Victoria*, and *Vigie* (1852); case of the *Phare* (1879), and others.

<sup>7</sup> Cases of fisheries of Terra Nova (1877), etc.



class. It goes without saying that in exceptional cases where the financial question involved is of a very important character from the point of view of the interests of the State, for example, in case it concerned the bankruptcy of a State, each Power, invoking national honor or vital interests, may decline to resort to arbitration as a means of settling the difficulty.

It seems that obligatory arbitration could not and should not be applied to disputes of the second class, which are much more important and threatening to the general peace. In this category are included disputes of all kinds arising in connection with political treaties which concern the vital interests and national honor of States. Obligatory arbitration in these cases would tie the hands of the interested Power, and reduce it to a passive state when dealing with questions upon which its security in large part depends; that is to say, questions of which none but the sovereign Power can be the judge. *In introducing international arbitration into the international life of States we must proceed with extreme care in order not to extend unreasonably its sphere of application, so as to shake the confidence which may be inspired therein, or discredit arbitration in the eyes of Governments and peoples.*

We must not lose sight of the fact that each State, and above all each Great Power, would prefer to propose the abrogation of the treaty making arbitration obligatory, rather than to submit to it questions which absolutely require that the decision thereof shall be made by the sovereign Power acting freely and without restriction. In all cases, in the interests of a greater development of the institution of arbitration, the Conference should limit its application to a specified number of legal questions arising from the interpretation of existing treaties of no political significance. These treaties should be specifically noted in advance by the Conference, and their enumeration can be completed in time as the theory, and above all the practice, of international law may indicate.

Among the treaties the interpretation of which should be submitted entirely and unconditionally to obligatory arbitration, we must note first of all that extensive group of treaties of a world-wide character which have formed a system of *international* relationships—international unions—to serve interests which are also international. Such, for example, are conventions regarding postal and telegraph unions, international protection of literary property, etc. In time, in proportion to the increasing means of intercommunication between States, a great number of their moral and material interests will lose their exclusively national character, and will be raised to the height of interests of the whole international community. To provide for these interests by the efforts and with the means of a single State is an impossible work. And that is why each year adds to the number of treaties of a world-wide character, uniting many States, and determining the ways and means for the common protection of common interests.

Since other treaties, as a general rule, are only *artificial settlements of opposing interests*, treaties of a universal character always express necessarily the agreement upon *common and identic* interests. That is the reason that within the scope of these treaties serious disputes incapable of settlement, or conflicts of a national character in which the interests of one are absolutely opposed to those of another, never arise and cannot arise. So far as momentary misunderstandings are concerned—concerning their interpretation, each State will willingly confide the solution to an arbitral tribunal, it being understood that all the Powers

have an equal interest in maintaining the treaties in question, which serve [127] as bases for extensive and complex systems of international institutions and regulations which are the only means of serving vital and permanent needs.

It should be noticed that the first attempt to introduce obligatory arbitration into international practice was in fact made in a treaty of a universal character, that relating to the Postal Union of 1874; Article 16 of this treaty establishes obligatory arbitration for the solution of all the differences with reference to the interpretation and application of the treaty in question.

The Hague Conference would seem therefore to be perfectly justified in extending the provisions of Article 16 of the Treaty of Berne to all treaties of a universal character which are entirely analogous to this one.

In the category of treaties of a world-wide character susceptible of submission to obligatory arbitration, the treaties contained in the following two subdivisions may be included:

1. Treaties concerning international protection of the great arteries of world-wide intercourse, postal, telegraph, railroad conventions; conventions for the protection of submarine cables, regulations to prevent the collision of vessels on the high seas, conventions regarding navigation of international rivers and interoceanic canals.

2. Treaties providing for the international protection of intellectual and moral interests, whether of particular States, or, in general, of the whole international community. To this subdivision belong conventions regarding the protection of literary, artistic, and musical property, conventions for the protection of industrial property (trade marks, patents), conventions concerning the use of weights and measures, conventions concerning sanitation, veterinary surgery, and measures to be taken to prevent phylloxera.

Besides treaties of a world-wide character, arbitration could also be applied to the solution of differences arising from the interpretation and application of treaties concerning particular fields of private international law, civil and criminal.

It must be noted, however, that the most important questions of international law are actually decided by the particular legislation of each State.

Because of the difficulties of this situation, resulting in a great lack of definition of the mutual rights and duties of individuals in international intercourse, the question of a code of private international law has been considered. So long as this question is not definitely decided, either by the conclusion of separate treaties between States, or by the conclusion of a treaty of a world-wide character, it would be more prudent not to attempt obligatory arbitration except in questions relating to the right of succession to property, which is already, to a certain degree, sufficiently regulated by international treaties.

So far as questions of international criminal law which arise with regard to the interpretation of treaties concerning cooperation between States for the administration of justice are concerned, it would seem that these questions, being exclusively of a legal character, might be decided by obligatory arbitration, this appearing to be equally possible and desirable for all States.

Finally, with a view to preventing those disputes and misunderstandings which are so frequent among States with regard to the delimitation of boundaries, it would also seem most opportune to confide to obligatory arbitration the inter-

pretation of so-called treaties of delimitation, so far as these are of a technical and non-political character.

Such are the limits within which it would be possible and desirable to determine the sphere of action of obligatory arbitration.

We may permit ourselves to believe that in time it will become possible to extend obligatory arbitration to cases not actually provided for in advance; but even within the limits above indicated, this means of action will be a great aid to the success of the great principles of law and justice in the international field.

The Peace Conference, by recognizing so far as possible the use of arbitration as obligatory, will by that fact approach the goal which was set up before the Governments of the Great Powers at Aix-la-Chapelle in 1818. It [128] will set an example of justice, concord, and moderation; it will sanction the efforts of all Governments for the protection of peaceful arts, for the development of the eternal prosperity of States and for the reestablishment of the high ideals of religion and morality.

### III.—RUSSIAN PROPOSALS CONCERNING THE ARBITRAL TRIBUNAL

#### (a) ARTICLES WHICH MIGHT REPLACE ARTICLE 13

##### ARTICLE 1

With a view to unifying international arbitral practice as much as possible, the contracting Powers have agreed to establish for a period of.....years, an arbitral tribunal, to which the cases of obligatory arbitration enumerated in Article 10 will be submitted, unless the interested Powers agree upon the establishment of a special arbitral tribunal for the settlement of the dispute which has arisen between them.

Litigant Powers may also resort to the above-indicated tribunal in all cases of voluntary arbitration if a special agreement concerning the same is made between them.

It is of course understood that all Powers, not excepting those who are not contracting Powers nor those who have made reservations, can submit their differences to this tribunal by addressing the Permanent Bureau provided for in Article.....of Appendix A.

##### ARTICLE 2

The organization of the arbitral tribunal is given in Appendix A of the present article.

The organization of arbitral tribunals established by special agreements between litigant Powers, as well as the rules of procedure to be followed during the investigation of the dispute and the rendering of the arbitral award, are set forth in Appendix B (Arbitral Code).

The provisions contained in this latter Appendix may be modified by a special agreement between the States which resort to arbitration.

(b) ANNEX TO THE RUSSIAN PROPOSAL

In case Articles 1 and 2 are accepted it would be necessary to:

- (1) Redraft Appendix A mentioned in the article.
- (2) Introduce corresponding modifications into the draft of the arbitral code.

(c) APPENDIX A, MENTIONED IN THE ADDITIONAL ARTICLE 2 OF THE RUSSIAN PROPOSAL

In the absence of a special *compromis* the arbitral tribunal provided for in Article 13 shall be formed as follows:

SECTION 1. The contracting Powers establish a permanent tribunal for the solution of the international disputes which are referred to it by the Powers by virtue of Article 13 of the present Convention.

SECTION 2. The Conference shall designate for the period which will elapse before the meeting of another Conference, five Powers, each one of which, in case of a request for arbitration, shall name a judge, either from its own nationals or from others.

The judges thus named form the arbitral tribunal with power to consider the case which has arisen.

SECTION 3. If one or more Powers among those in litigation are not represented upon the arbitral tribunal, by virtue of the preceding article, each of the two parties in litigation shall have the right to be represented thereon by a person of its own choice acting as judge and having the same rights as the other members of the tribunal.

[129] SECTION 4. The tribunal shall choose its president from among its members and he, in case of equal division of votes, shall have the deciding vote.

SECTION 5. A Permanent Bureau of arbitration shall be established by the five Powers who are designated by virtue of the present act to create the arbitral tribunal. They shall draft the rules governing this Bureau, appoint employees thereof, provide for their successors in case of necessity, and shall fix their salaries. This Bureau, the office of which shall be at The Hague, shall consist of a secretary general, and assistant secretary, a secretary to act as archivist, as well as the rest of the personnel who shall be appointed by the secretary general.

SECTION 6. The expenses of maintaining this Bureau shall be divided among the States in the proportions established for the International Postal Bureau.

SECTION 7. The Bureau shall make an annual report of its business to the five Powers which appoint it, and the latter shall transmit this report to the other Powers.

SECTION 8. The Powers between which a dispute has arisen shall address the Bureau and furnish it with the necessary documents. The Bureau shall advise the five Powers above mentioned and they shall immediately create the tribunal. This tribunal shall meet ordinarily at The Hague; it may also meet in another city, if an agreement to this effect is reached by the interested States.

SECTION 9. During the work of the tribunal the Bureau shall furnish the secretarial staff. It shall follow the tribunal in case of change of meeting-place. The archives of the international tribunal shall be deposited with the Bureau.

SECTION 10. Procedure before the tribunal above-mentioned shall be governed by the provisions of the arbitral code [below].

## IV.—DRAFT OF ARBITRAL CODE PROPOSED BY THE RUSSIAN DELEGATION

## ARTICLE 1

The signatory Powers have approved the principles and rules below for arbitral procedure between nations, except for modifications which may be introduced in each special case by common agreement between litigant Governments.

## ARTICLE 2

The interested States, having accepted arbitration, sign a special act (*compromis*) in which the questions submitted to the decision of the arbitrator are clearly defined as well as all of the facts and legal points involved therein, and in which is found a formal confirmation of the agreement of the two contracting Powers to submit in good faith and without appeal to the arbitral decision which is to be rendered.

## ARTICLE 3

The *compromis* thus freely concluded by the States may adopt arbitration either for all disputes arising between them or for disputes of a special class.

## ARTICLE 4

The interested Governments may entrust the duties of arbitrator to the sovereign or the chief of State of a third Power when the latter agrees thereto. They may also entrust these duties either to a single person chosen by them, or to an arbitral tribunal formed for this purpose.

In the latter case and in view of the importance of the dispute the arbitral tribunal may be formed as follows: each contracting party chooses two arbitrators and all the arbitrators together choose the umpire who is *de jure* president of the arbitral tribunal.

In case of equal voting the litigant Governments shall address a third Power or a third person by common agreement and the latter shall name the umpire.

## ARTICLE 5

If the litigant parties do not arrive at an agreement upon the choice of the [130] third Government or person mentioned in the preceding article, each of the parties shall name a Power not involved in the dispute so that the Powers thus chosen by the litigant Powers may designate an umpire by common agreement.

## ARTICLE 6

The disability or reasonable challenge, even if of but one of the above arbitrators, as well as the refusal to accept the office of arbitrator after the acceptance or death of an arbitrator already chosen, invalidates the entire *compromis* except in cases where these conditions have been foreseen and provided for in advance by common agreement between the contracting parties.

## ARTICLE 7

The meeting-place of the arbitral tribunal shall be fixed either by the contracting States, or by the members of the tribunal themselves. A change from this meeting-place of the tribunal is not permissible except by a new agreement between the interested Governments, or in case of *force majeure*, upon the initiative of the tribunal itself.

## ARTICLE 8

The litigant Powers have the right to appoint delegates or special agents attached to the arbitral tribunal for the purpose of serving as intermediaries between the tribunal and the interested Governments.

Besides these agents the above-mentioned Governments are authorized to commit the defense of their rights and interests before the arbitral tribunal to counsel or advocates appointed by them for this purpose.

## ARTICLE 9

The arbitral tribunal decides what language shall be used in its deliberations and arguments of the parties.

## ARTICLE 10

Arbitral procedure should generally cover two phases, preliminary and final.

The former consists in the communication to the members of the arbitral tribunal by the agents of the contracting parties of all acts, documents, and arguments, printed or written, regarding the questions in litigation.

The second—final or oral—consists of the debates before the arbitral tribunal.

## ARTICLE 11

After the close of the preliminary procedure the debates open before the arbitral tribunal and are under the direction of the president.

Minutes of all of these deliberations are drawn up by secretaries appointed by the president of the tribunal. These minutes are of legal force.

## ARTICLE 12

The preliminary procedure being concluded the arbitral tribunal has the right to refuse all new acts and documents which the representatives of the parties may desire to submit to it.

## ARTICLE 13

The arbitral tribunal, however, is always absolutely free to take into consideration new papers or documents which the delegates or counsel of the two litigant Governments have made use of during their explanations before the tribunal.

The latter has the right to require the production of these papers or documents and to make them known to the opposite party.

## ARTICLE 14

The arbitral tribunal besides has the right to require the agents of the parties to present all the acts or explanations which it may need.

## ARTICLE 15

The agents and counsel of litigant Governments are authorized to present [131] orally to the arbitral tribunal all the explanations or proofs which will aid the defense of the cause.

## ARTICLE 16

These agents and counsel have also the right to present motions to the tribunal concerning the matters to be discussed.

The decisions of the tribunal upon these motions are final and cannot form the subject of any discussion.

## ARTICLE 17

The members of the arbitral tribunal are entitled to put questions to the agents or counsel of the contracting parties or to ask them for explanations on doubtful points.

Neither the questions put nor the remarks made by the members of the tribunal during the deliberations can be regarded as expressions of opinion by the tribunal in general or by its members in particular.

## ARTICLE 18

The arbitral tribunal alone is authorized to determine its competence in interpreting the clauses of the *compromis*, and according to the principles of international law as well as the provisions of special treaties which may be invoked in the case.

## ARTICLE 19

The arbitral tribunal is entitled to issue rules of procedure for the conduct of the case, to decide the forms and time in which each party must conclude its arguments and to pass upon the interpretation of the documents produced and communicated to the two parties.

## ARTICLE 20

When the agents and counsel of the parties have submitted all the explanations and evidence in defense of their case, the president of the arbitral tribunal shall pronounce the discussion closed.

## ARTICLE 21

The deliberations of the arbitral tribunal on the merits of the case take place in private.

Every decision, whether final or interlocutory, is taken by a majority of the members present.

The refusal of a member of the tribunal to vote must be recorded in the minutes.

## ARTICLE 22

The award given by a majority of votes should be drawn up in writing and signed by each member of the arbitral tribunal.

Those members who are in the minority state their dissent when signing.

## ARTICLE 23

The arbitral award is solemnly read out at a public sitting of the tribunal and in the presence of the agents and counsel of the Governments at variance.

## ARTICLE 24

The arbitral award, duly pronounced and notified to the agents of the Governments at variance, settles the dispute between them definitively and without appeal, and closes all of the arbitral procedure instituted by the *compromis*.

## ARTICLE 25

Each party shall pay its own expenses and one-half of the expenses of the arbitral tribunal without prejudice to the decision of the tribunal regarding the indemnity that one or the other of the parties may be ordered to pay.

[132]

## ARTICLE 26

The arbitral award is void in case of a void *compromis* or exceeding of power, or of corruption proved against one of the arbitrators.

The procedure above indicated concerning the arbitral tribunal and beginning with Section 7 commencing with the words "the seat of the arbitral tribunal" also applies in case arbitration is entrusted to a single person chosen by the interested Governments.

In case a sovereign or head of a State should reserve the right to decide personally as arbitrator, the procedure to be followed should be fixed by the sovereign or the head of the State himself.

## V.—DOCUMENT PRESENTED BY MR. MARTENS

ARBITRATION BETWEEN THE GOVERNMENTS OF HER BRITANNIC MAJESTY AND  
THE UNITED STATES OF VENEZUELA

## RULES OF PROCEDURE

The tribunal of arbitration, established in virtue of the Treaty of Washington of February 2, 1897, to decide the boundary claims between Great Britain and the United States of Venezuela, has adopted the following rules of procedure for its meetings.

## 1

At the opening of its meetings the tribunal of arbitration shall, upon the proposal of the president, appoint secretaries, who shall be charged with drawing up full reports of all its proceedings. The agents of the two Governments being in dispute have the right to appoint their special secretaries for the purpose of drawing up reports of all the proceedings of the tribunal, except the deliberations of the tribunal with closed doors.

## 2

The reports of the proceedings of the tribunal of arbitration shall be signed by the president, the two agents of the Governments in dispute, and countersigned by the principal secretary. These reports alone are authoritative and have full legal force.



## 3

At all debates and deliberations of the tribunal of arbitration the proceedings shall be carried on in French or in English. The final report of proceedings shall be drawn up in three languages: English, French, and Spanish.

## 4

The agents of the two Governments in dispute are required to communicate to the tribunal the names of their counsel and special secretaries.

## 5

The public shall be admitted to the public meetings of the tribunal of arbitration only on presentation of tickets to be obtained from the secretaries of the tribunal.

## 6

The president of the tribunal of arbitration has the direction of all the debates and deliberations before the tribunal.

## 7

In case of the temporary illness of any one of the members of the tribunal of arbitration or of the agents of the Government of the United States of Venezuela or of Great Britain, the meetings of the tribunal may be suspended for a short period of time. In case of the long or serious illness of any one of the members of the tribunal, the second article of the Treaty of Washington of February 2, 1897, shall be put in force.

[133]

## 8

The preliminary proceedings of the tribunal of arbitration, consisting in the communication by the two Governments in dispute of all written acts and documents relative to the present trial being closed, the tribunal of arbitration, by virtue of the Treaty of Washington, shall have the right to refuse to receive any new acts or documents which the representatives of the two above-mentioned Governments may wish to present.

## 9

At the same time the tribunal of arbitration has full power and liberty to take into consideration any new acts or documents to which the agents or counsel of the two Governments in dispute may invite the attention of the tribunal. It has further the right to demand the production of these acts or documents and to communicate them to the party opposed.

## 10

The tribunal of arbitration has the right to require the agents of the two Governments in dispute to produce any act or document and to make any explanations it may deem necessary.

## 11

The agents or counsel of the two Governments in dispute have full right to produce before the tribunal of arbitration any oral explanations they may consider necessary to the due development of their case.

## 12

The aforesaid agents or counsel have equally the right to submit to the tribunal of arbitration any motion or amendment to the subject under discussion. All decisions arrived at by the tribunal on such motions or amendments shall be regarded as final and not admitting any further debate.

## 13

The members of the tribunal of arbitration have the right to put questions to the agents or counsel of the two Governments in dispute, or to demand further and more detailed explanations on all doubtful points. Neither the questions that may be put nor the observations made by members of the tribunal shall be regarded as expressing the views of the tribunal in general, or of its members in particular.

## 14

The tribunal of arbitration is authorized to determine its competency on any point exclusively on the basis of the Treaty of Washington of February 2, 1897, and in accordance with the principles of international law.

## 15

After the agents or counsel of the two Governments in dispute have laid before the tribunal of arbitration all their explanations and proofs, the president shall declare the debates to be closed.

## 16

The tribunal of arbitration may, during the debates before it, discuss any question with closed doors.

## 17

In matters of procedure all decisions are taken by the majority of votes of members present.

## 18

The failure of any one of the members of the tribunal of arbitration to take part in the voting shall be duly noted in the report of the proceedings.

[134]

## 19

The final award, decided by the majority of votes, shall be drawn up in English, French, and Spanish.

Translations in French and Spanish shall be certified by the agents of the two Governments.

## 20

The refusal, if any, on the part of the minority of members of the tribunal to sign the award shall be duly noted in the report of the proceedings.

## 21

The final award shall be solemnly read in public meeting of the tribunal of arbitration in presence of the members. The agents and counsel of the two Governments being in dispute shall be invited to assist at this public meeting.

## 22

Three copies of the final award shall be drawn up, and, of these copies, one shall be presented to the agent of the Government of Great Britain, to be communicated to his Government, and the second shall be presented to the agent of the Government of the United States of Venezuela, to be communicated to his Government.

The third copy, in French, shall be communicated to the French Government for the archives of the French Republic.

## 23

Three duplicates of the final award shall be signed by the president and all the members of the tribunal of arbitration. Those of its members who have voted with the minority shall, if they see fit, state in such duplicate their dissent therefrom.

## 24

The final award, duly declared and communicated to the agents of the two Governments being in dispute, shall be deemed to decide definitely the points in dispute between the Governments of Great Britain and of the United States of Venezuela, concerning the lines of their respective frontiers, and shall finally close all proceedings of the tribunal of arbitration established by the Treaty of Washington, February 2, 1897.

## ANNEX B. DOCUMENTS PRODUCED BY THE BRITISH DELEGATION

### PERMANENT COURT OF ARBITRATION

#### *(a) Proposition of his Excellency Sir Julian Pauncefote*

## 1

With a view to facilitate immediate recourse to arbitration by States which may fail to adjust by diplomatic negotiations differences arising between them, the signatory Powers agree to organize in manner hereinafter mentioned, a permanent "tribunal of international arbitration" which shall be accessible at all times and which shall be governed by the code of arbitration provided by this Convention, so far as the same may be applicable and consistent with any special stipulations agreed to between the contesting parties.

## 2

For that purpose a permanent central office shall be established at . . . , where the records of the tribunal shall be preserved and its official business [135] shall be transacted.

A permanent secretary, an archivist, and a suitable staff shall be appointed who shall reside on the spot. This office shall be the medium of communication for the assembling of the tribunal at the request of the contesting parties.

## 3

Each of the signatory Powers shall transmit to the others the names of two persons of its nationality who shall be recognized in their own country as jurists or publicists of high character for learning and integrity and who shall be willing and qualified in all respects to act as arbitrators. The persons so nominated shall be members of the tribunal, and a list of their names shall be recorded in the central office. In the event of any vacancy occurring in the said list from death, retirement, or any other cause whatever, such vacancy shall be filled up in the manner hereinbefore provided, with respect to the original appointment.

## 4

Any of the signatory Powers desiring to have recourse to the tribunal for the peaceful settlement of differences which may arise between them, shall notify such desire to the secretary of the central office, who shall thereupon furnish such Powers with a list of the members of the tribunal from which they shall select such number of arbiters as may be stipulated for in the arbitration agreement. They may besides, if they think fit, adjoin to them any other person, although his name shall not appear on the list. The persons so selected shall constitute the tribunal for the purposes of such arbitration, and shall assemble at such date as may be fixed by the litigants.

The tribunal shall ordinarily hold its sessions at . . . , but it shall have power to fix its place of session elsewhere and to change the same from time to time as circumstances and its own convenience or that of the litigants may suggest.

## 5

Any Power, although not a signatory Power, may have recourse to the tribunal on such terms as shall be prescribed by the regulations.

## 6

The Government of . . . is charged by the signatory Powers to establish on their behalf as soon as possible after the conclusion of this Convention a Permanent Council of Administration at . . . to be composed of five members and a secretary.

The Council shall organize and establish the central office, which shall be under its control and direction. It shall make such rules and regulations from time to time as may be necessary for the proper discharge of the functions of the office. It shall dispose of all questions which may arise in relation to the working of the tribunal or which may be referred to it by the central office. It shall have absolute power as regards the appointment, suspension, or dismissal of all employees, and shall fix their salaries and control the general expenditure.

The Council shall elect its president, who shall have a casting vote. Three members shall form a quorum. The decisions of the Council shall be governed by a majority of votes.

The remuneration of the members shall be fixed from time to time by accord between the signatory Powers.

## 7

The signatory Powers agree to share among them the expenses attending the institution and maintenance of the central office and of the Council of Administration.

The expenses of and incident to every arbitration, including the remuneration of the arbiters, shall be equally borne by the contesting Powers.

*(b) New proposition of his Excellency Sir Julian Pauncefote concerning the Permanent Council*

NEW ARTICLE 6

A permanent Council composed of the representatives of the signatory Powers residing at The Hague and of the Netherland Minister for Foreign Affairs shall be instituted in this town as soon as possible after the ratification of the present Convention. This Council shall have the duty of establishing and organizing the central Bureau, which shall be under its direction and control. It shall proceed to the installation of the tribunal; it shall issue from time to time the necessary rules for the proper operation of the central Bureau. Likewise it shall decide all questions which may arise with regard to the operations of [136] the tribunal, or refer the same to the signatory Powers. It shall have entire control over the appointment, suspension, or dismissal of the officers and employees of the central Bureau. It shall fix the fees and salaries; it shall control the general expenses. The presence of five members at a meeting, duly called, is sufficient to render the discussions valid, and decisions shall be made by a majority vote.

ANNEX C. DOCUMENTS PRODUCED BY THE AMERICAN DELEGATION

I.—SPECIAL MEDIATION

*Proposition of Mr. Holls, delegate of the United States of America*

ARTICLE 7

The signatory Powers have reached an agreement in recommending the application, when circumstances allow, of special mediation in the following form:

In case of a serious difference threatening the peace, the States in dispute choose respectively a neutral Power with the mission of entering into direct communication with the object of preventing the rupture of pacific relations.

For a period of twenty days, unless another period is stipulated, the question in dispute is regarded as referred exclusively to these Powers. They must use their best efforts to settle the difference and to restore the *status quo ante* as soon as possible.

In case of a definite rupture of pacific relations, these Powers are charged with the joint task of taking advantage of any opportunity to restore peace.

II.—PROJECT FOR AN INTERNATIONAL TRIBUNAL—PROPOSITION OF THE COMMISSION OF THE UNITED STATES OF AMERICA SUBMITTED TO THE COMMITTEE OF EXAMINATION

*Resolved*, That in order to aid in the prevention of armed conflicts by pacific means, the representatives of the sovereign Powers assembled together in this Conference be, and hereby are, requested to propose to their respective Governments a series of negotiations for the adoption of a general treaty having for its

object the following plan, with such modifications as may be essential to secure the adhesion of at least nine sovereign Powers.

1. The tribunal shall be composed of judges chosen on account of their personal integrity and learning in international law by a majority of the members of the highest court now existing in each of the adhering States, one from each sovereign State participating in the treaty, and shall hold office until their successors are appointed by the same body.

2. The tribunal shall meet for organization at a time and place to be agreed upon by the several Governments, but not later than six months after the general treaty shall be ratified by nine Powers, and shall organize itself by the appointment of a permanent clerk and such other officers as may be found necessary, but without conferring any distinction upon its own members. The tribunal shall be empowered to fix its place of sessions and to change the same from time to time as the interests of justice or the convenience of the litigants may seem to require, and fix its own rules of procedure.

[137] 3. The contracting nations will mutually agree to submit to the international tribunal all questions of disagreement between them, excepting such as may relate to or involve their political independence or territorial integrity. Questions of disagreement, with the aforesaid exceptions, arising between an adherent State and a non-adherent State, or between two sovereign States not adherent to the treaty, may, with the consent of both parties in dispute, be submitted to the international tribunal for adjudication, upon the condition expressed in Article 6.

4. The tribunal shall be of a permanent character and shall be always open for the filing of cases and counter-cases, either by the contracting nations or by others that may choose to submit them, and all cases and counter-cases, with the testimony and arguments by which they are to be supported or answered, are to be in writing. All cases, counter-cases, evidence, arguments, and opinions expressing judgment are to be accessible, after a decision is rendered, to all who desire to pay the necessary charges for transcription.

5. A bench of judges for each particular case shall consist of not less than three nor more than seven, as may be deemed expedient, appointed by the unanimous consent of the tribunal, and not to include a member who is either a native, subject, or citizen of the State whose interests are in litigation in that case.

6. The general expenses of the tribunal are to be divided equally between the adherent Powers, but those arising from each particular case shall be provided for as may be directed by the tribunal. The presentation of a case wherein one or both of the parties may be a non-adherent State shall be admitted only upon condition of a mutual agreement that the State against which judgment may be found shall pay, in addition to the judgment, a sum to be fixed by the tribunal for the expenses of the adjudication.

7. Every litigant before the international tribunal shall have the right to make an appeal for reexamination of a case within three months after notification of the decision, upon presentation of evidence that the judgment contains a substantial error of fact or law.

8. This treaty shall become operative when nine sovereign States, whereof at least six shall have taken part in the Conference of The Hague, shall have ratified its provisions.

# ANNEX D. DOCUMENT PRODUCED BY THE ITALIAN DELEGATION

## AMENDMENT TO THE RUSSIAN DRAFT REGARDING MEDIATION AND ARBITRATION SUBMITTED BY HIS EXCELLENCY COUNT NIGRA

With the object of preventing or putting an end to international conflicts, the Peace Conference, assembled at The Hague, has resolved to submit to the Governments there represented the following articles which are intended to be made an international agreement.

### ARTICLE 1

In case a conflict between two or more Powers is imminent, and after every attempt at reconciliation by means of indirect negotiations has failed, the litigant parties are obliged to resort to mediation or arbitration in the cases indicated in the present act.

### ARTICLE 2

In all other cases mediation or arbitration are recommended by the signatory Powers; but remain voluntary.

[138]

### ARTICLE 3

In any case, and even during hostilities, each one of the Powers signatory to the present act, and not involved in the dispute, has the right to offer to the contending Powers its good offices and mediation, or to propose to them to resort to the mediation of another Power which is also neutral, or to arbitration.

This offer or this proposal cannot be considered by one or the other of the litigant parties as an unfriendly act, even in case mediation and arbitration, not being obligatory, are rejected.

### ARTICLE 4

A request for, or offer of, mediation has priority over arbitration.

But arbitration can or should be proposed according to the circumstances, not only when there is no demand for or offer of mediation, but also when mediation would have been rejected or would not have brought about reconciliation.

### ARTICLE 5

A proposal for mediation or arbitration, so long as it is not formally accepted by all the litigant parties, cannot, except where there is a contrary agreement, interrupt, delay, or hinder mobilization or other preparatory measures, nor military operations then taking place.

### ARTICLE 6

Recourse to mediation or arbitration according to Article 1 is obligatory:

- (1) .....
- (2) .....

## ANNEX E.<sup>1</sup> GENERAL SURVEY OF THE CLAUSES OF MEDIATION AND ARBITRATION AFFECTING THE POWERS REPRESENTED AT THE CONFERENCE

It is important to distinguish provisions having a general character, that is, common to all the Powers or to a considerable group of them, from those having the character of special conventional law between the States.

### SECTION 1.—*Provisions of a General Character*

The principal provisions to be noticed in this class are the following :

1. *General *vanu* concerning recourse to the good offices of a friendly Power contained in Protocol No. 23 of the Congress of 1856.*

This *vanu* was expressed in the following circumstances :

The Earl of CLARENDON having asked permission to lay before the Congress [139] a proposition, which it appears to him ought to be favorably received, states that the calamities of war are still too present to every mind not to make it desirable to seek out every expedient calculated to prevent their return ; that a stipulation had been inserted in Article 8 of the treaty of peace, recommending that in case of difference between the Porte and one or more of the other signing Powers, recourse should be had to the mediation of a friendly State before resorting to force.

The first plenipotentiary of Great Britain conceives that this happy innovation might receive a more general application, and thus become a barrier against conflicts, which frequently break forth only because it is not always possible to enter into explanation and to come to an understanding.

He proposes, therefore, to agree upon a resolution calculated to afford for the future to the maintenance of peace that chance of duration, without prejudice, however, to the independence of Governments.

Count WALEWSKI declares himself authorized to support the idea expressed by the first plenipotentiary of Great Britain ; he gives the assurance that the plenipotentiaries of France are wholly disposed to concur in the insertion in the protocol of a *vanu*, which, being fully in accordance with the tendencies of our epoch, would not in any way fetter the liberty of action of Governments.

Count BUOL would not hesitate to concur in the opinion of the plenipotentiaries of Great Britain and of France, if the resolution of the Congress is to have the form indicated by Count WALEWSKI, but he could not take, in the name of his Court, an absolute engagement calculated to limit the independence of the Austrian Cabinet.

The Earl of CLARENDON replies, that each Power is and will be the sole judge of the requirements of its honor and of its interests ; that it is by no means his intention to restrict the authority of the Governments, but only to afford them the opportunity of not having recourse to arms, whenever differences may be adjusted by other means.

Baron MANTEUFFEL gives the assurance that the King, his august master, completely shares the ideas set forth by the Earl of CLARENDON ; that he therefore

<sup>1</sup> [Document prepared by Baron DESCAMPS at the request of the Third Commission.]



considers himself authorized to adhere to them, and to give them the utmost development which they admit of.

Count ORLOFF, while admitting the wisdom of the proposal made to the Congress, considers that he must refer to his Court respecting it, before he expresses the opinion of the plenipotentiaries of Russia. . . .

Count WALEWSKI adds, that there is no question of stipulating for a right or of taking an engagement; that the wish expressed by the Congress cannot in any case oppose limits to the liberty of judgment, of which no Power can divest itself in questions affecting its dignity; that there is therefore no inconvenience in attaching a general character to the idea entertained by the Earl of CLARENDON, and in giving to it the most extended application. . . .

Count BUOL approves the proposition in the shape that Lord CLARENDON has presented it, as having a humane object; but he could not assent to it, if it were wished to give to it too great an extension, or to deduce from it consequences favorable to *de facto* Governments, and to doctrines which he cannot admit.

He desires besides that the Conference, at the moment of terminating its labors, should not find itself compelled to discuss irritating questions, calculated to disturb the perfect harmony which has not ceased to prevail among the plenipotentiaries. . . .

Whereupon, the plenipotentiaries do not hesitate to express, in the name of their Governments, the *vœu* that States, between which any serious misunderstanding may arise, should, before appealing to arms, have recourse, as far as circumstances might allow, to the good offices of a friendly Power.

The plenipotentiaries hope that the Governments not represented at the Congress will unite in the sentiment which has inspired the *vœu* recorded in the present protocol.

2. *Mediation in case of difference threatening the relations between the Sublime Porte and the other Powers signatory to the Treaty of Paris of 1856.*

Treaty of March 30, 1856: Article 8. If there should arise between the Sublime Porte and one or more of the other signatory Powers a difference threatening the maintenance of their relations, the Sublime Porte or each of the Powers, before having recourse to the employment of force, will put the other contracting Parties in a position to prevent this extremity through their mediation.

[140] 3. *Good offices to limit the theater of war by neutralizing territories comprised in the basin of the Kongo as defined by treaty.*

General Act of the Conference of Berlin, February 26, 1885: Article 11. In the case where a Power exercising rights of sovereignty or of protectorate in the countries mentioned in Article 1 and placed under the *régime* of commercial liberty may be involved in a war, the high signatory Parties of the present act, and those who shall adhere to it subsequently, engage themselves to lend their good offices to the end that the territories belonging to this Power and comprised in the conventional zone of commercial liberty may be, with the common consent of this Power and of the other party or parties belligerent, placed for the duration of the war under the *régime* of neutrality and considered as belonging to a non-belligerent State; the belligerent parties may renounce, thenceforth, the extension of hostilities to the territories thus neutralized, as also their use as a base for the operations of war.

4. *Obligatory mediation and voluntary arbitration in case of serious disagreement arising concerning, or within the limits of, the basin of the Kongo as defined by treaty.*

General Act of the Conference of Berlin, February 26, 1885: Article 12. In cases where serious disagreement with regard to, or within the limits of, the territories mentioned in Article 1 and placed under the *régime* of commercial liberty, may arise between the signatory Powers of the present act or Powers which may adhere thereto in the future, these Powers agree before appealing to arms, to resort to the mediation of one or more friendly Powers.

In the same case the same Powers reserve the right to resort voluntarily to arbitral procedure.

5. *Establishment of an arbitral tribunal by virtue of the General Act of the Conference of Brussels concerning the African Slave Trade.*

General Act of the Conference of Brussels, July 2, 1890: Article 55. The capturing officer and the authority which has conducted the inquiry shall each appoint an arbitrator within forty-eight hours, and the two arbitrators chosen shall have twenty-four hours to choose an umpire. The arbitrators shall, as far as possible, be chosen from among the diplomatic, consular, or judicial officers of the signatory Powers. Natives in the pay of the contracting Governments are formally excluded. The decision shall be by a majority of votes, and be considered as final.

If the court of arbitration is not constituted in the time indicated, the procedure in respect to the indemnity, as well as in regard to damages, shall be in accordance with the provisions of Article 58, paragraph 2.

Article 56. The cases shall be brought with the least possible delay before the tribunal of the nation whose flag has been used by the accused. However, the consuls or any other authority of the same nation as the accused, specially commissioned to this end, may be authorized by their Government to pronounce judgment instead of the tribunal.

Article 58. Any decision of the national tribunal or authorities referred to in Article 56, declaring that the seized vessel did not carry on the slave trade, shall be immediately enforced, and the vessel shall be at perfect liberty to continue on its course.

In this case, the captain or owner of any vessel that has been seized without legitimate ground of suspicion, or subjected to annoyance, shall have the right of claiming damages, the amount of which shall be fixed by agreement between the Governments directly interested, or by arbitration, and shall be paid within a period of six months from the date of the judgment acquitting the captured vessel.

6. *Institution of an arbitral tribunal by virtue of the Universal Postal Union.*

Convention of July 4, 1891: Article 23. Sec. 1. In case of disagreement between two or more members of the Union as to the interpretation of the present Convention, or as to the responsibility of an administration in case of the loss of a registered article, the question in dispute is decided by arbitration. To that end, each of the administrations concerned chooses another member of the Union not directly interested in the matter.

Sec. 2. The decision of the arbitrators is given by an absolute majority of votes.

[141] Sec. 3. In case of an equality of votes the arbitrators choose, with a view of settling the difference, another administration equally uninterested in the question in dispute.

Sec. 4. The stipulations of the present article apply equally to all the agreements concluded by virtue of the preceding Article 19. (Regarding services in connection with letters and boxes of declared value, postal money orders, parcel post, collection of bills and drafts, certificates of identity, subscriptions to newspapers, etc.)

7. *Establishment of a voluntary arbitration office, by virtue of the International Union for the Transportation of Merchandise by Railroad.*

Convention of October 14, 1890: Article 57. Sec. 1. To facilitate and assure the execution of the present Convention, a central office of international transportation shall be organized, charged with . . . 3. To decide, at the request of the parties, disputes which may arise concerning railroads.

Article 22, section 2, of the Convention of July 4, 1891, authorizes the International Bureau of the Postal Union "to give at the request of the parties concerned, an opinion upon questions in dispute." These judicial opinions form a sort of pre-arbitration which it seemed interesting to note.

In fulfilment of Article 57, section 1, of the Convention of October 14, 1890, the Swiss Federal Council published, under date of November 29, 1892, a set of regulations determining the arbitral procedure for disputes brought before the central office for international transportation.

## SECTION 2.—*Special Conventional Law*

### *Germany*

Article 1 of the Anglo-German agreement of July 1, 1890, provides that the delimitation of the southern frontier of "Walfish Bay" shall be reserved for decision by arbitration if within two years from the date of the signature of this agreement no understanding is reached between the two Powers regarding the determination of the said frontier.

### *Austria-Hungary*

The treaty of Commerce of May 17, 1869, between Austria-Hungary and Siam contains a general clause providing for arbitration concerning all differences which may arise between the two countries.

## ARTICLE 26

Should any question arise between the high contracting Powers, which is not settled by amicable diplomatic intercourse or correspondence, it is hereby agreed that the settlement of such question shall be referred to the arbitration of a friendly neutral Power, to be chosen by common accord, and that the result of such arbitration shall be accepted by the high contracting Parties as a final decision.

*Belgium*

Belgium has concluded eleven treaties containing arbitration clauses.

Six of these clauses are general and cover all possible differences. The other five are of limited scope.

The *general arbitration clauses* are the following:

1. Belgium and the Hawaiian Islands. Treaty of Friendship, Commerce, and Navigation, October 4, 1862. Article 26:

If, by the concurrence of unfortunate circumstances, differences between the contracting Parties become the ground for an interruption of friendly relations, and if, after they have exhausted all means for a friendly and conciliatory discussion, the object of their mutual desires is not reached, [142] arbitration by a third Power, friendly to both Parties, shall be invoked by common accord, in order to prevent by this means a complete rupture.

2. Belgium and Siam. Treaty of Friendship and Commerce, August 29, 1868. Article 24:

If any difference shall arise between the two contracting countries which may not be settled amicably by diplomatic correspondence between the two Governments, these Governments shall, by common accord, nominate as arbitrator some third neutral and friendly Power, and the result of the arbitration shall be accepted by the two Parties.

3. Belgium and the South African Republic. Treaty of Friendship, Establishment, and Commerce, February 3, 1876. Article 14. (Same text as that of the treaty with the Hawaiian Islands, above, No. 1.)

4. Belgium and Venezuela. Treaty of Friendship, Commerce, and Navigation, March 1, 1884. Article 2:

If any difference whatever arises between Belgium and Venezuela, which cannot be settled in a friendly manner, the two high contracting Parties agree to submit the solution of the difficulty to the arbitration of a friendly Power, proposed and accepted by common agreement.

5. Belgium and Ecuador. Treaty of Friendship, Commerce, and Navigation, March 5, 1887. Article 2. (Same text as that of the treaty with Venezuela, *supra*, No. 4.)

6. Belgium and the Orange Free State. Treaty of Friendship, Establishment, and Commerce, December 27, 1894. Article 14. (Same text as that of the treaty with the Hawaiian Islands, *supra*, No. 1.)

The clauses providing for *limited arbitration* are:

1. Belgium and Italy. Treaty of Commerce and Navigation, December 11, 1882. Article 20:

If any difficulty arises concerning either the interpretation or the execution of the preceding articles, the two high contracting Parties, after having exhausted all direct means of reaching an agreement, agree to resort to the decision of a commission of arbitrators.

This commission shall be composed of an equal number of arbitrators chosen by the high contracting Parties and an arbitrator chosen by the commission itself.

The procedure to be followed shall be determined by the arbitrators, unless an agreement be reached in regard thereto by the Belgian and Italian Governments.

2. Belgium and Greece. Treaty of Commerce and Navigation, May 25, 1895. Article 21:

The high contracting Parties agree to resort to arbitration in all disputes which may arise from the interpretation or execution of the present treaty.

3. Belgium and Sweden. Treaty of Commerce and Navigation, June 11, 1895. Article 20. (Same text as that of the treaty with Greece, *supra*, No. 2.)

4. Belgium and Norway. Treaty of Commerce and Navigation, June 11, 1895. Article 20:

In cases involving a difference between the two contracting Powers arising from the interpretation or application of the present treaty, which cannot be settled in a friendly manner by diplomatic correspondence, the two Powers agree to submit the same to the decision of an arbitral tribunal, whose decision they agree to respect and loyally to execute.

The arbitral tribunal shall be composed of three members. Each of the two contracting Parties shall designate one, not chosen from among its nationals or the inhabitants of its country. These two arbitrators shall name a third. If they cannot come to an agreement thereon, the third arbitrator shall be named by a Government selected by the two arbitrators, or if they fail to agree, then by lot.

5. Belgium and Denmark. Treaty of Commerce and Navigation, June 18, 1895. Article 20. (Same text as that of the treaty with Greece, *supra*, No. 2.)

#### *Denmark*

1. Denmark and Venezuela. Treaty of Commerce and Navigation, December 19, 1862. Article 26:

If, by the concurrence of unfortunate circumstances, differences between the two high contracting Parties cause an interruption of friendly relations, and if after they have exhausted the means for friendly and conciliatory discussion the object of their respective claims is not completely at-  
[143] tained, arbitration by a third friendly and neutral Power shall be invoked by common agreement before resorting to the awful use of arms.

An exception to the above is made in the case where the Party which believes itself injured cannot secure the consent of the other Party to the choice of an arbitrator by common accord, or in default of common agreement, by lot, within three months counting from the day the invitation to make such choice is extended to it.

2. Denmark and Belgium. Treaty of Commerce and Navigation, June 18, 1895. Article 20. (Reproduced under the heading, Belgium.)

#### *Spain*

Below are given the treaties concluded by Spain in which the arbitration clause has been inserted:

##### *A. General clauses of arbitration:*

1. Spain and Venezuela. Treaty of Commerce and Navigation, May 20, 1882. Article 14:

If, as is not to be anticipated, there should arise between Venezuela and Spain any difference which it shall not be possible to settle in a friendly manner by the usual and ordinary means, the two high contracting Parties

agree to submit such difference to the arbitration of any third Power friendly to both, which may have been proposed and accepted by mutual consent.

2. Spain and Ecuador. Additional Treaty of Peace and Friendship, May 26, 1888. Article 1:

Every question or difference which may arise between Spain and Ecuador respecting the interpretation to be placed on the existing treaties, or respecting any other point not foreseen in them, shall, if it cannot be settled in an amicable manner, be submitted to the arbitration of a friendly Power, to be proposed and accepted by common consent.

3. Spain and Colombia. Additional Treaty of Peace and Friendship to the treaty of 1881, signed at Bogota, April 28, 1894. Article 1:

Every controversy or difference which may arise between Spain and Colombia regarding the interpretation of the existing treaties, and any others which may hereafter be entered into, shall be decided by an arbitrator whose decision shall be final, and who shall be proposed and accepted by common agreement. The differences which may arise upon points not provided for in the said treaties or agreements shall likewise be submitted to arbitration; but if there is not any agreement regarding the adoption of this procedure, because the questions affect the sovereignty of the nation or are otherwise incompatible with arbitration, both Governments will be bound in every case to accept the mediation or good offices of a friendly Government for the amicable solution of all differences.

When any difference between Spain and Colombia is submitted to the judgment of an arbitrator, the high contracting Parties shall establish, by common accord, the mode of procedure, terms, and formalities which the judge and the parties must observe, in the course and termination of the judgment by arbitration.

4. Spain and Honduras. Treaty of Peace and Friendship, November 17, 1894. Article 2. (Text identical with that in No. 2.)

[144] B. *Clause providing for limited arbitration:*

Spain and Sweden and Norway. Declarations, June 23, 1887. Article 2:

Questions which may arise regarding the interpretation or execution of the treaty of commerce between Spain and Sweden and Norway, of March 15, 1883, suspended by the convention of January 18 last, and of the treaty of navigation between the same countries of March 15, 1883, or concerning the consequences of any violation of those treaties whatever, shall be submitted to arbitral commissions when all direct means of settlement and friendly discussion between the two high contracting Parties have been exhausted, and the decisions of the commissions shall be binding upon the high contracting Parties.

The members of these commissions shall be named by common agreement by the two high contracting Parties, and in case an agreement cannot be obtained, each of them shall name one arbitrator or an equal number of arbitrators, and those thus nominated to these offices shall designate an additional arbitrator who shall act in case of disagreement.

The high contracting Parties shall fix the arbitral procedure in each case, and if they fail to do so, the arbitral commission shall determine it before exercising its powers. In every case, the high contracting Parties shall set forth exactly the questions or matters to be submitted to arbitration.

See the ministerial notes of January 27, 1892, and August 9, 1893, mentioned under the headings, "Sweden" and "Norway."

*France*

The Treaty of Friendship, Commerce, and Navigation, of June 4, 1886, between France and Korea contains in Article 1, section 2, the following provision:

If differences arise between one of the high contracting Parties and a third Power, the other high contracting Party may be required by the first to lend its good offices with a view to bringing about a friendly settlement.

*Great Britain*

The treaties concluded by Great Britain and containing the arbitration clauses are as follows:

1. Great Britain and Italy. Treaty of Commerce and Navigation, June 15, 1883. Annexed protocol:

Any controversies which may arise respecting the interpretation or the execution of the present treaty, or the consequences of any violation thereof, shall be submitted, when the means of settling them directly by amicable agreement are exhausted, to the decision of commissions of arbitration, and the result of such arbitrations shall be binding upon both Governments.

The members of such commissions shall be selected by the two Governments by common consent, failing which each of the Parties shall nominate an arbitrator, or an equal number of arbitrators, and the arbitrators thus appointed shall select an umpire.

The procedure of the arbitrators shall in each case be determined by the contracting Parties, failing which the commission of arbitration shall itself be entitled to determine it beforehand.

2. Great Britain and Uruguay. Treaty of Commerce and Navigation of November 13, 1885. Article 15. (Text identical with that of No. 1.)

3. Great Britain and Greece. Treaty of Commerce and Navigation of November 10, 1886. Annexed protocol. (Text identical with that of No. 1.)

4. Great Britain and Mexico. Treaty of Friendship, Commerce, and Navigation of November 27, 1888. Article 15. (Text identical with that of No. 1.)

- [145] 5. Great Britain and Portugal. Anglo-Portuguese *modus vivendi* of May 31, 1893. (Delimitation of possessions in Eastern Africa.)

*Greece*

1. Greece and Italy. Consular Convention of November 27, 1880. Article 32. (Reproduced under the heading, "Italy.")

2. Greece and Great Britain. Treaty of Commerce and Navigation, November 10, 1886. Annexed protocol. (Reproduced under the heading, "Great Britain.")

3. Greece and Belgium. Treaty of Commerce and Navigation, May 25, 1895. Article 21. (Reproduced under the heading, "Belgium.")

*Italy*

The following treaties contain the clause providing for arbitration (*compromis* clause):

1. Italy and Uruguay. Extradition Convention, April 14, 1879. Article 16:

The high contracting Parties agree that controversies which may arise respecting the interpretation or execution of the present Convention, or the

consequences of any infraction of one of its provisions, should, when the means of composing them directly by amicable agreement shall have been exhausted, be submitted to the decision of commissions of arbitration, and that the issue of such arbitration should be binding upon both Governments.

The members composing such commissions shall be chosen by the two Governments by common accord; in default of this, each of the Parties shall appoint its own arbitrator, or an equal number of arbitrators, and the arbitrators appointed shall select another.

The procedure to be observed in arbitration shall in each case be determined by the contracting Parties, and failing this, the commission of arbitrators shall consider itself authorized to determine it beforehand.

2. Italy and Roumania. Consular Convention, August 17, 1880. Article 32. (Text identical with that of No. 1.)

3. Italy and Greece. Consular Convention of November 27, 1880. Article 26. (Text identical with that of No. 1, except for the addition to the first paragraph of the following provision: "It is understood that the jurisdiction of the respective tribunals in matters of private law is in no way restricted by the provisions of the present article.")

4. Italy and Belgium. Treaty of Commerce, December 11, 1882. Article 20. (Text reproduced above under the heading, "Belgium.")

5. Italy and Montenegro. Treaty of Commerce, March 28, 1883. Article 17:

In case of disagreement concerning the interpretation or execution of the provisions contained in the present treaty, when direct means of reaching an agreement by friendly arbitration have been exhausted, the question shall be submitted to the decision of a commission of arbitrators, and the result of this arbitration shall be binding upon both Governments.

This commission shall be composed of an equal number of arbitrators chosen by each Party, and the arbitrators thus chosen shall, before performing any other operation, choose a last arbitrator. The arbitral procedure, if the Parties do not determine it by agreement, shall be previously decided upon by the commission of arbitrators itself.

6. Italy and Great Britain. Treaty of Commerce, June 15, 1883. Annexed protocol. (Text similar to that of No. 1.)

7. Italy and the Netherlands. Convention for Free Patronage, January 9, 1884. Article 4:

If any difficulty arises concerning the interpretation of this Convention, the two high contracting Parties agree to submit it to a commission of [146] arbitrators. This commission shall be composed of an equal number of arbitrators chosen by the high contracting Parties and an arbitrator chosen by the commission itself.

8. Italy and Korea. Treaty of Friendship, Commerce, and Navigation, June 26, 1884. Article 1:

In case of differences arising between one of the high contracting Parties and a third Power, the other high contracting Party, if requested to do so, shall exert its good offices to bring about an amicable settlement of the difficulty.

9. Italy and Uruguay. Treaty of Commerce, September 19, 1885. Article 27. (Text identical with that of No. 1.)



10. Italy and South African Republic. Treaty of Commerce, October 6, 1886. Article 9. (Text identical with that of No. 7.)

11. Italy and the Republic of San Domingo. Treaty of Commerce, October 18, 1886. Article 28. (Text identical with that of No. 1.)

12. Italy and Greece. Treaty of Commerce, April 1, 1889. Annexed protocol. (Text identical with that of No. 1.)

13. Italy and Orange Free State. Treaty of Commerce, January 9, 1890. Article 9. (Text identical with that of No. 7.)

14. Italy and Mexico. Treaty of Commerce, April 16, 1890. Article 27. (Text similar to that of No. 1.)

15. Italy and Switzerland. Treaty of Commerce of April 19, 1892. Article 14:

The high contracting Parties agree, should occasion arise, to settle by means of arbitration questions concerning the interpretation and application of the present treaty, which cannot be settled to their common satisfaction by the direct method of diplomatic negotiation.

16. Italy and Colombia. Treaty of Commerce, October 27, 1892. Article 27. (Text similar to that of No. 1.)

17. Italy and Montenegro. Extradition Convention, October 29, 1892. Article 18. (Text identical with that of No. 5.)

18. Italy and Paraguay. Treaty of Commerce, August 22, 1893. Article 23. (Text identical with that of No. 1.)

19. Italy and Argentine Republic. General Treaty of Arbitration, July 23, 1898:

His Majesty the King of Italy and his Excellency the President of the Argentine Republic, animated by the desire of always promoting the cordial relations which exist between their States, have resolved to conclude a general treaty of arbitration, and have named for this purpose as the ministers plenipotentiary:

His Majesty the King of Italy, his Excellency Count NAPOLEON CANEVARO, Senator of the Kingdom, Vice Admiral in the Royal Navy, his Minister of Foreign Affairs; and his Excellency the President of the Argentine Republic, his Excellency Don ENRICE B. MORENO, his Envoy Extraordinary, etc., Minister Plenipotentiary at the Court of the King of Italy;

Who, having found their respective full powers to be perfectly regular, have agreed upon the following:

ARTICLE 1. The high signatory Powers agree to submit to arbitral decision all controversies, whatever may be their nature and cause, which may arise between them, during the existence of this treaty, and which could not be settled in a friendly manner by direct negotiation.

It makes no difference if the controversies originated in facts prior to the provision of the present treaty.

ARTICLE 2. The high signatory Powers shall conclude a special convention for each case, in order to set forth the exact matter in dispute, the extent of the powers of the arbitrators, and any other matter with regard to procedure which shall be deemed proper.

In default of such convention, the tribunal shall specify, according to the reciprocal claims of the Parties, the points of law and fact which should be decided to close the controversy.

[147] In all other regards, in default of a special convention, the following rules shall apply:

ARTICLE 3. The tribunal shall be composed of three judges. Each one of the signatory States shall designate one of them. The arbitrators thus chosen shall choose the third arbitrator.

If they cannot agree upon a choice, the third arbitrator shall be named by the head of a third State, who shall be called upon to make the selection. This State shall be designated by the arbitrators already named. If they cannot agree upon the nomination of a third arbitrator, request shall be made of the President of the Swiss Confederation and of the King of Sweden and Norway, alternately. The third arbitrator thus selected shall be of right president of the tribunal.

The same person can never be named successively as third arbitrator.

None of the arbitrators shall be a citizen of the signatory States, nor domiciled or resident within their territories. The arbitrators shall have no interest whatever in the questions forming the subject of arbitration.

ARTICLE 4. When one arbitrator, for whatever reason, cannot take charge of the office to which he has been named, or if he cannot continue therein, his successor shall be appointed by the same procedure as was followed for his appointment.

ARTICLE 5. In default of special agreements between the Parties, the tribunal shall designate the time and place for its meetings outside the territories of the contracting States, choose the language to be used, determine the methods of examination, the formalities and periods which shall be prescribed for the Parties, the procedure to be followed, and, in general, make all decisions necessary for their operations, as well as settle all difficulties concerning procedure which may arise during the course of the argument.

The Parties agree, on their side, to place at the disposal of the arbitrators all means of information within their power.

ARTICLE 6. An agent of each Party shall be present at the sessions and represent his Government in all matters regarding arbitration.

ARTICLE 7. The tribunal has power to decide upon the regularity of its formation, the validity of the *compromis* and the interpretation thereof.

ARTICLE 8. The tribunal shall decide according to the principles of international law, unless the *compromis* applies special rules or authorizes the arbitrators to decide only in the rôle of *amiable compositeurs*.

ARTICLE 9. Unless there is a provision expressly to the contrary, all the deliberations of the tribunal shall be valid when they are secured by a majority vote of all of the arbitrators.

ARTICLE 10. The award shall decide finally each point in litigation. It shall be drawn up in duplicate original and signed by all the arbitrators. In case one of them refuses to sign, the others shall mention it and the award shall take effect when signed by the absolute majority of the arbitrators. Dissenting opinions shall not be inserted in the decision.

The award shall be notified to each Party through its representative before the tribunal.

ARTICLE 11. Each Party shall bear its own expenses and one-half of the general expenses of the arbitral tribunal.

ARTICLE 12. The award, legally rendered, decides the dispute between the Parties within the limits of its scope.

It shall contain an indication of the period within which it must be executed. The tribunal which rendered it shall decide questions which may arise concerning its execution.

ARTICLE 13. The decision cannot be appealed from, and its execution is entrusted to the honor of the nations signatory to this agreement.

However, a demand for revision will be allowed before the same tribunal which rendered the award and before it is executed:

- (1) If it has been based upon a false or erroneous document;
- (2) If the decision was in whole or in part the result of an error of positive or negative fact which results from the acts or documents in [148] the case.

ARTICLE 14. The present treaty shall run for a period of ten years from the exchange of ratifications. If it is not denounced six months before its expiration, it shall be considered renewed for another period of ten years, and so on in like manner.

ARTICLE 15. The present treaty shall be ratified and the ratifications exchanged at Buenos Aires within six months from this date.

### *Japan*

Japan concluded a treaty of Friendship, Commerce, and Navigation with Siam, February 25, 1898. Article 3 of the annexed protocol contains the following arbitration clause:

Any controversies which may arise respecting the interpretation or the execution of the treaty signed this day or the consequences of any violation thereof shall be submitted, when the means of settling them directly by amicable agreement are exhausted, to the decision of commissions of arbitration, and the result of such arbitration shall be binding upon both Governments.

The members of such commissions shall be selected by the two Governments by common consent, failing which each of the Parties shall nominate an arbitrator, or an equal number of arbitrators, and the arbitrators thus appointed shall select an umpire.

The procedure of the arbitration shall in each case be determined by the contracting Parties, failing which the commission of arbitration shall be itself entitled to determine it beforehand.

### *Mexico*

1. Mexico and Great Britain. Treaty of Friendship, Commerce, and Navigation of November 27, 1888. Article 15. (Reproduced under the heading, "Great Britain.")

2. Mexico and Italy. Treaty of Commerce of April 16, 1890. Article 27. (Reproduced under the heading, "Italy.")

### *Montenegro*

Montenegro and Italy. Treaty of Commerce of March 28, 1883. Article 17. (Reproduced under the heading, "Italy.")

### *Norway*

Norway is bound by clauses of arbitration with the following countries:

1. Sweden and Norway and Siam. Treaty of Friendship, Commerce, and Navigation of May 18, 1868. Article 28. (Text identical with Article 26 of the treaty between Austria-Hungary and Siam, reproduced under the heading, "Austria-Hungary.")

2. Sweden and Norway, and Mexico. Treaty of July 29, 1885. Articles 26 and 27.

ARTICLE 26. The questions that may arise respecting the interpretation or the execution of the treaty of commerce between Sweden and Norway and Mexico or respecting the consequences of any violation of the said treaty shall be submitted, when all direct means of arrangement and friendly discussion between the two high Parties have been exhausted, to commissions of arbitration whose decisions shall be binding on the high contracting Parties. The members of these commissions shall be appointed by a common agreement by the two high Parties, and in case agreement can not be reached, each of them shall name an arbitrator or an equal number of arbitrators, and those who are thus named shall designate an umpire, who shall act in case of disagreement. The procedure for the arbitration shall be determined [149] in each case by the high contracting Parties, and in default thereof the commission of arbitration shall determine it before entering upon its duties. In all cases the high contracting Parties shall define the questions or matters which are to be submitted to arbitration.

ARTICLE 27. It is consequently stipulated that if one or more articles of the present treaty come to be violated or infringed, neither of the contracting Parties shall make or authorize reprisals of any kind, nor declare war upon the other by reason of an injury suffered by it until the Party which considers itself aggrieved has presented to the other a statement accompanied by evidence of its complaints, and, after having requested justice and satisfaction, its request has been rejected and the offending Party has refused to submit the difference to the commission of arbitration.

3. Sweden and Norway and Spain. Declaration of June 23, 1887. Article 2. (Text reproduced under the heading, "Spain.")

4. Norway and Spain. Diplomatic notes of January 27, 1892, and August 9, 1893, concerning the application of the principle of arbitration, as it is regulated by the Declaration of June 23, 1887, to the Conventions of January 24, 1892, and June 27, 1892, respecting the commercial relations of the two countries.

5. Norway and Switzerland. Treaty of Commerce and Settlement of March 22, 1894. Article 7:

In case a difference respecting the interpretation or the application of the present treaty arises between the two contracting Parties and can not be settled in a friendly way by means of diplomatic correspondence, they agree to submit it to the judgment of an arbitral tribunal, whose decision they engage to respect and execute loyally.

The arbitral tribunal shall be composed of three members. Each of the contracting Parties shall designate one of them, who shall be chosen outside its nationals and the inhabitants of the country. These two arbitrators shall name the third. If they can not agree on the choice of the latter, the third arbitrator shall be named by a Government designated by the two arbitrators or, in default of agreement, by lot.

6. Norway and Belgium. Treaty of Commerce and Navigation of June 11, 1895. Article 20. (Text reproduced above under the heading, "Belgium.")

7. Sweden and Norway and Chile. Declaration of July 6, 1895, concerning the establishment of an arbitral tribunal for the claims for indemnity relating to the civil war in Chile in 1891.

8. Norway and Portugal. Treaty of Commerce of December 31, 1895. (Same text as that of the treaty with Switzerland reproduced above, No. 5.)

*Netherlands*

1. Netherlands and Italy. Convention for Gratuitous Patronage of January 9, 1884. Article 4. (Reproduced under the heading, "Italy.")

2. Netherlands and Portugal. These two States are reciprocally bound by a clause of arbitration, at first limited, then generalized under the following conditions:

A. *Clause of limited arbitration.* The Convention concluded at Lisbon, June 10, 1893, between the Netherlands and Portugal to regulate in an exact way the relations between the two countries in the Archipelago of Timor and Solor contains in its Article 7 the following arbitration clause:

In case any difference should arise in respect of their international relations in the Archipelago of Timor and Solor or on the subject of the interpretation of the present Convention, the high Parties engage to submit to the decision of a commission of arbitrators. This commission shall be composed of an equal number of arbitrators chosen by the high contracting Parties and an arbitrator designated by those arbitrators.

B. *Clause of general arbitration.* The Declaration exchanged at Lisbon, July 5, 1894, between the two Governments on the subject of the provisional regulation of commercial relations contains the following clause:

All questions and all differences respecting the interpretation or execution of the present Declaration and likewise any other question that may arise between the two countries, provided that it does not touch their [150] independence or their autonomy, if they cannot be settled amicably, shall be submitted to the judgment of two arbitrators, of which one shall be appointed by each of the two Governments. In case of difference of opinion between the two arbitrators, the latter shall designate by common agreement a third who shall decide.

3. Netherlands and Roumania. Treaty of Commerce and Navigation of March 15, 1899. Article 6:

Every question or difference regarding the interpretation, application, or execution of the present Convention, if it can not be settled amicably, shall be submitted to the decision of a commission of three arbitrators. Each of the two high contracting Parties shall designate one arbitrator, and these two arbitrators shall name the third. If they can not agree upon the choice, the third arbitrator shall be named by the Government of a third State designated by the two high contracting Parties.

*Portugal*

1. Portugal and Great Britain. Anglo-Portuguese *modus vivendi* of May 31, 1893. (Delimitation of possessions in East Africa.)

2. Portugal and Netherlands. Convention of June 10, 1893. Article 7 (clause of limited arbitration) and Declaration of July 5, 1894 (clause of general arbitration).

3. Portugal and Norway. Treaty of Commerce of December 31, 1895. (Reproduced under the heading, "Norway.")

*Roumania*

1. Roumania and Italy. Consular Convention of August 17, 1880. Article 32. (Reproduced under the heading, "Italy.")

2. Roumania and Switzerland. Treaty of Commerce of February 19/ March 3, 1893. Article 7:

The high contracting Parties agree to settle, should the case arise, by means of arbitration the questions concerning the application and interpretation of the present Convention which can not be settled to their mutual satisfaction by the direct means of diplomatic negotiation.

3. Roumania and Netherlands. Treaty of Commerce and Navigation of March 15, 1899. Article 6. (Reproduced under the heading, "Netherlands.")

### *Siam*

Five treaties concluded by the Siamese Government contain a clause of arbitration:

1. Siam and Sweden and Norway. Treaty of Friendship, Commerce, and Navigation of May 18, 1868. Article 25. (Text identical with Article 26 of the treaty between Austria-Hungary and Siam. Reproduced under the heading, "Austria-Hungary.")

2. Siam and Belgium. Treaty of Friendship and Commerce of August 29, 1868. (Reproduced under the heading, "Belgium.")

3. Siam and Italy. Treaty of Friendship, Commerce, and Navigation of October 3, 1868. Article 27. (Reproduced under the heading, "Italy.")

4. Siam and Austria-Hungary. Treaty of Commerce of May 17, 1869. Article 26. (Reproduced under the heading, "Austria-Hungary.")

5. Siam and Japan. Treaty of Friendship, Commerce, and Navigation of February 25, 1898. Article 3 of the annexed protocol. (Reproduced under the heading, "Japan.")

### *Sweden*

1. Sweden and Norway and Siam. Treaty of Friendship, Commerce, and Navigation of May 18, 1868. Article 24. (Text identical with Article 26 of the treaty with Austria-Hungary. Reproduced under the heading, "Austria-Hungary.")

2. Sweden and Norway and Mexico. Treaty of Commerce of July 29, [151] 1885. Article 26. (Reproduced under the heading, "Norway.")

3. Sweden and Norway and Spain. Declaration of June 23, 1887, Article 2. (Reproduced under the heading, "Spain.")

4. Sweden and Spain. Diplomatic notes of January 27, 1892, and August 9, 1893, respecting the application of the principle of arbitration, as regulated by the Declaration of June 23, 1887, to the Conventions of January 24, 1892, and June 27, 1892, respecting the commercial relations of the two countries.

5. Sweden and Belgium. Treaty of Commerce and Navigation of June 11, 1895. Article 20. (Reproduced under the heading, "Belgium.")

6. Sweden and Norway and Chile. Declaration of July 6, 1895. (Reproduced under the heading, "Norway.")

### *Switzerland*

1. Switzerland and Hawaii. Treaty of Friendship, Establishment, and Commerce of July 20, 1864. Article 12. (Text similar to that of the treaty between Belgium and Hawaii. Reproduced under the heading, "Belgium.")

2. Switzerland and Salvador. Treaty of Friendship, Establishment, and Commerce of October 30, 1883. Article 13:

In case a difference should arise between the two contracting countries and can not be amicably arranged through diplomatic correspondence between the two Governments, the latter agree to submit it to the judgment of an arbitral tribunal, whose decision they engage to respect and execute loyally.

The arbitral tribunal shall be composed of three members. Each of the two States shall designate one of them chosen outside of its nationals and the inhabitants of the country. The two arbitrators shall name the third. If they can not agree on this choice, the third arbitrator shall be named by a Government designated by the two arbitrators, or, in the absence of agreement, by lot.

3. Switzerland and the South African Republic. Treaty of Friendship, Establishment, and Commerce of November 6, 1885. Article 11. (Text identical with that of No. 2.)

4. Switzerland and Ecuador. Treaty of Friendship, Establishment, and Commerce of June 22, 1888. Article 4. (Text identical with that of No. 2.)

5. Switzerland and Independent State of the Kongo. Treaty of Friendship, Establishment, and Commerce of November 16, 1889. Article 13. (Text identical with that of No. 2.)

6. Switzerland and Italy. Treaty of Commerce of April 19, 1892. Article 14. (Reproduced under the heading "Italy.")

7. Switzerland and Roumania. Treaty of Commerce of February 19/March 3, 1893. Article 7. (Reproduced under the heading, "Roumania.")

8. Switzerland and Norway. Treaty of Commerce and Establishment of March 22, 1894. Article 7. (Reproduced under the heading, "Norway.")

## EIGHTH MEETING

JULY 27, 1899

His Excellency Mr. **Staal** presiding.

The **President** states that the minutes of the meeting of July 25 have not yet been printed and the Conference would like to leave the care of approving them to the Bureau.

The printed proofs thereof will be distributed as soon as possible.

The **PRESIDENT** then gives the floor to Mr. **RENAULT** to present an oral report on the work of the Drafting Committee of the Final Act.

Mr. **Renault** states that it is his duty to give brief account of the propositions which the Committee submits to the Conference concerning: (1) the Convention relating to the laws and customs of war on land; (2) the Convention for the adaptation to maritime warfare of the principles of the Geneva Convention of August 22, 1864; (3) the three Declarations concerning the prohibition of asphyxiating projectiles, the discharge of explosives from balloons, and the use of bullets which expand in the human body.

The Drafting Committee has inserted each of these decrees of the Conference between a preamble and final clauses.

In the matter of the first Convention, relating to the laws of war on land, the drafters of the preamble have endeavored to combine the object of the Convention with the object of the Conference. It has been their desire thus to form a link between this work and the work accomplished at Brussels twenty-five years ago, also a result of the initiative of the Russian Government. Finally, there has been incorporated in this preamble the declaration made by Mr. **MARTENS**, as unanimously voted by the Second Commission and by the Conference. The following text was adopted:

Considering that, while seeking means to preserve peace and prevent armed conflicts between nations, it is likewise necessary to bear in mind the case where an appeal to arms may be brought about by events which their solicitude could not avert;

Animated by the desire to serve, even in this extreme case, the interests of humanity and the ever progressive needs of civilization;

Thinking it important, with this object, to revise the general laws and customs of war, either with a view of defining them with greater precision or of confining them within such limits as would mitigate their severity as far as possible;

Inspired by these views which are enjoined at the present day, as they were twenty-five years ago at the time of the Brussels Conference in 1874, by a wise and generous foresight;

Have, in this spirit, adopted a great number of provisions, the object of which is to define and govern the usages of war on land.

According to the views of the high contracting Parties, these provisions, the wording of which has been inspired by the desire to diminish the evils of war, so far as military



requirements permit, are intended to serve as a general rule of conduct for the belligerents in their mutual relations and in their relations with inhabitants.

It has not, however, been found possible at present to concert regulations covering all the circumstances which arise in practice.

On the other hand, the high contracting Parties clearly do not intend that unforeseen cases should, in the absence of a written undertaking, be left to the arbitrary judgment of military commanders.

Until a more complete code of the laws of war has been issued, the high contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience.

They declare that it is in this sense especially that Articles 1 and 2 of the Regulations adopted must be understood.

The high contracting Parties, wishing to conclude a Convention to this effect, have appointed the following as their plenipotentiaries, to wit: . . .

[153] Who, after communication of their full powers, found in good and due form, have agreed upon the following:

Mr. RENAULT, before reading the five articles which follow this preamble, explains that the Drafting Committee is of the opinion that it is preferable not to incorporate in the Convention itself the text of the sixty articles adopted relating to the laws and customs of war, but to give them the form of separate Regulations, which should be annexed to the Convention. It goes without saying that this method of procedure does not render the rules contained in this annex any the less binding, and that its only object is to prevent the awakening of certain susceptibilities. In this way it is clearly brought out that these rules are not a recognition of the right of force. Each Power merely engages to limit the action of its troops in case of war.

Consequently, the five articles will have the following form:

#### ARTICLE 1

The high contracting Parties shall issue instructions to their armed land forces, which shall be in conformity with the "Regulations respecting the laws and customs of war on land" annexed to the present Convention.

#### ARTICLE 2

The provisions contained in the Regulations referred to in Article 1 are only binding on the contracting Powers, in case of war between two or more of them.

These provisions shall cease to be binding from the time when, in a war between contracting Powers, a non-contracting Power joins one of the belligerents.

#### ARTICLE 3

The present Convention shall be ratified as speedily as possible.

The ratifications shall be deposited at The Hague.

A *procès-verbal* shall be drawn up recording the receipt of each ratification, and a copy, duly certified, shall be sent, through the diplomatic channel, to all the contracting Powers.

#### ARTICLE 4

Non-signatory Powers are allowed to adhere to the present Convention.

For this purpose they must make their adhesion known to the contracting Powers by means of a written notification, addressed to the Netherland Government, and by it communicated to all the other contracting Powers.

## ARTICLE 5

In the event of one of the high contracting Parties denouncing the present Convention, such denunciation would not take effect until a year after the written notification made to the Netherland Government, and by it at once communicated to all the other contracting Powers.

This denunciation shall have effect only in regard to the notifying Power.

In faith of which the plenipotentiaries have signed the present Convention and have affixed their seals thereto.

Done at The Hague, the . . . one thousand eight hundred and ninety-nine, in a single original, which shall remain deposited in the archives of the Netherland Government, and copies of which, duly certified, shall be sent through the diplomatic channel to the contracting Powers.

In so far as Article 2 is concerned, Mr. RENAULT observes that it merely sanctions the common law in the matter of the binding effect of the Regulations, which can concern the contracting Powers only in their relations with each other. The same rules are to be found in the Declaration of St. Petersburg.

Article 3 contains the usual clauses in the matter of ratification. The form of the deposit of ratifications has, however, been simplified. It was not necessary to reserve the right of parliaments to intervene; each sovereign or head of a State must decide to what extent he is free to ratify the Convention—whether he requires the authorization of the parliament in order to ratify, or the passage of a law to give effect to the Convention.

Article 4 concerns adhesion. The question arose as to whether the Convention should be open or closed. After a little hesitation, the first of the two solutions was decided upon, and it was decided that all States, even those not represented here and those that have not signed the Convention, might sign it later. The simplest possible method of procedure has been adopted for this adhesion.

Article 5 concerns denunciation. It is evident that the Convention should not be a perpetual engagement. What, then, should the procedure be, if one of the contracting Parties desires to withdraw?

Although, in principle, this last hypothesis should not be provided for, it nevertheless seemed more prudent to consider it. A case might arise where a

State, on the eve of war, might suddenly announce its intention to denounce [154] the Convention. In order to avoid abuses of this kind, it was decided to specify the method of procedure in the matter of denunciation in a clause tending rather to restrict its effect than to encourage its exercise. Moreover, States will adhere more readily to a contractual engagement, if they know in advance that, according to the letter of the law, they may free themselves at a given time, without making their denunciation appear almost violent, as it would in the absence of a special clause.

The **President** asks the Conference if it adopts the preamble and the articles that have just been read to it and commented upon.

No one asking the floor, the **PRESIDENT** declares these texts adopted by the Conference.

Mr. **Renault** passes to the Convention for the adaptation to naval warfare of the principles of the Geneva Convention.

He says that the preamble of this Convention recalls by its form and modest proportions that of the Geneva Convention itself. It is in the following words:

Animated alike by the desire to diminish, as far as depends on them, the inevitable evils inseparable from war, and wishing with this object to adapt to maritime warfare the principles of the Geneva Convention of August 22, 1864, have resolved to conclude a Convention to this effect.

They have, in consequence, appointed as their plenipotentiaries, to wit: . . .

Who, after communication of their full powers, found in good and due form, have agreed on the following provisions:

Here follow the ten articles adopted by the Conference, which have been incorporated in the Convention.

Article 11 and those that follow only repeat the clauses of the Convention concerning the laws of war. They are drawn up in the following terms:

#### ARTICLE 11

The rules contained in the above articles are binding only on the contracting Powers, in case of war between two or more of them.

The said rules shall cease to be binding from the time when, in a war between the contracting Powers, one of the belligerents is joined by a non-contracting Power.

#### ARTICLE 12

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

On the receipt of each ratification a *procès-verbal* shall be drawn up, a copy of which, duly certified, shall be sent through the diplomatic channel to all the contracting Powers.

#### ARTICLE 13

Non-signatory Powers which have accepted the Geneva Convention of August 22, 1864, may adhere to the present Convention.

For this purpose they must make their adhesion known to the contracting Powers by means of a written notification addressed to the Netherland Government, and by it communicated to all the other contracting Powers.

#### ARTICLE 14

In the event of one of the high contracting Parties denouncing the present Convention, such denunciation shall not take effect until a year after the notification made in writing to the Netherland Government, and forthwith communicated by it to all the other contracting Powers.

This denunciation shall have effect only in regard to the notifying Power.

In faith of which the respective plenipotentiaries have signed the present Convention and have affixed their seals thereto.

Done at The Hague, the . . . one thousand eight hundred and ninety-nine, in a single original, which shall remain deposited in the archives of the Netherland Government, and copies of which, duly certified, shall be sent through the diplomatic channel to the contracting Powers.

Mr. RENAULT points out the fact that Article 13 alone presents a slight difference in the matter of adhesion.

It is clear that, in order to adhere to stipulations which are based upon the Geneva Convention, that Convention itself must first have been accepted. It cannot be considered restrictive, since, inasmuch as the Geneva Convention is open, nothing is easier than to adhere to it first, according to the form provided

by that Convention itself, and to accede then to the Hague Convention, in conformity with Article 13.

The **President** asks the Conference whether it adopts the preamble and final provisions that have just been read to it.

These texts are adopted without discussion.

Mr. **Renault** then passes to the three Declarations.

He explains that these Declarations are preceded by a very simple preamble which is identical for all of them. It is in these terms:

The undersigned, plenipotentiaries of the Powers represented at the International Peace Conference at The Hague, duly authorized to that effect by their Governments,

Inspired by the sentiments which found expression in the Declaration of St. Petersburg of November 29/December 11, 1868,

Declare . . . etc.

[155] Mr. **RENAULT** points out that the form of this preamble does not imply the adhesion of the signatory States to the Convention of St. Petersburg of 1868. It means merely that these States, even though they have not signed the said Convention, nevertheless consider it wise "to be inspired by the sentiments which found expression in the Declaration of St. Petersburg." They are free, if they so desire, to complete at some future time this manifestation of their sentiments by formally adhering to the Convention of 1868.

As to the final clauses, they are likewise identical in the three Declarations and they correspond exactly with the final provisions of the Conventions relating to the laws of war and the "Red Cross."

They are thus formulated:

The present Declaration shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

A *procès-verbal* shall be drawn up on the receipt of each ratification, a copy of which, duly certified, shall be sent through the diplomatic channel to all the contracting Powers.

Non-signatory Powers may adhere to the present Declaration. For this purpose they must make their adhesion known to the contracting Powers by means of a written notification addressed to the Netherland Government, and by it communicated to all the other contracting Governments.

In the event of one of the high contracting Parties denouncing the present Declaration, such denunciation shall not take effect until a year after the notification made in writing to the Netherland Government, and by it forthwith communicated to all the other contracting Powers.

This denunciation shall have effect only in regard to the notifying Power.

In faith of which the plenipotentiaries have signed the present Declaration, and have affixed their seals thereto.

Done at The Hague, the . . . one thousand eight hundred and ninety-nine, in a single original, which shall remain deposited in the archives of the Netherland Government, and copies of which, duly certified, shall be sent through the diplomatic channel to the contracting Powers.

Finally, Mr. **RENAULT** reads the text of each Declaration, as it will appear between the preamble and the final clauses.

## FIRST DECLARATION

The contracting Powers agree to abstain from the use of projectiles the only object of which is the diffusion of asphyxiating or deleterious gases.

## SECOND DECLARATION

The contracting Powers agree to abstain from the use of bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions.

## THIRD DECLARATION

The contracting Powers agree to prohibit, for a term of five years, the discharge of projectiles and explosives from balloons, or by other new methods of a similar nature.

On the motion of the **President**, the Conference adopts all of these provisions.

**Count de Grelle Rogier** makes the following declaration:

At the moment of closing the work of the Conference, I ask the opportunity of stating precisely the conditions under which the Belgian Government undertakes to give its full and entire adhesion to the various provisions of the draft Convention for the pacific settlement of international disputes.

Belgium is happy to join in all measures that are of a nature to facilitate the development of the idea of peace, the bringing of peoples towards the noble and elevated end whose path has been outlined for us by an august initiative. Like all the Powers here represented, she is on the eve of contracting obligations defined notably by Articles 2 and 3 of the draft Convention relative to mediation and arbitration.

It seems to me necessary to formulate, on this occasion, certain reservations of a character otherwise general, based on the special position that my country occupies in European public law by reason of its status of perpetual neutrality.

It will suffice for me to recall that the treaty of April 19, 1839, created rights and duties between Belgium and the Powers guaranteeing her neutrality.

These rights, and the obligations which are derived from them, must remain intact and the engagements that Belgium is ready to sign to-day, having in view the settlement of international disputes, cannot at any time affect them.

I beg the Conference kindly to record this declaration, the meaning of which, I have no doubt, will be easily understood and accepted.

Record is made of the declaration of **COUNT DE GRELLE ROGIER**.

His Excellency **Mr. Eyschen** remarks that on several occasions it has been stated that the Convention to be concluded at The Hague could not modify prior organic treaties of states. The Treaty of London of May 11, 1867, imposes on Luxemburg the mandate of a permanent neutrality which enjoys the collective guaranty of the Powers. The new stipulations merely augment and cannot diminish the advantages derived from the old treaties.

In so far as is necessary, Luxemburg makes the same reservations as Belgium.

Record is made of the declaration of his Excellency **Mr. Eyschen**.

**Mr. Delyanni** makes the following declaration :

On the occasion of the declaration concerning the prohibition of the use of bullets which expand or flatten easily in the human body, such as bullets with a hard envelope, of which the envelope does not entirely cover the core or is pierced with incisions, I believe it my duty to declare, in the name of my Government, that I will sign this declaration with the express reservation that the bullets of the Gras rifle still in use in the Greek army is not included in this category, and that we cannot make any promise concerning the prohibition of their use in case of war.

I ask the Conference to record my declaration which will be written in the minutes of the current meeting.

Record is made of the declaration of **Mr. DELYANNI**.

**Lou Tseng-tsiang** makes the following declaration in the name of the first delegate of China :

At the moment when the work of the Conference is about to be crowned by the signature of the Final Act, the first delegate of China has the honor to state to the Conference his position as the first delegate of China.

Through the intermediary of his colleagues, he has followed with attention and interest the deliberations of the different commissions of which he has had the honor to be a member.

In the purely humanitarian questions on the subject of war with which the commissions have been charged, he has given without hesitation his adhesion to the proposals of the delegates of the Powers invited to this high assembly.

Sometimes, he has believed that the acceptance of one or another proposal would not be to the advantage of China ; he has, conformably to his general instructions, given his vote against the form in which it was advanced, but, when the desired form was obtained, he rallied to his colleagues in order to assure unanimity.

Now, at the moment when the Convention is about to take its final form in the Final Act, he can only confine himself, according to his instructions, to having a careful translation made of it, to be sent, with the original text of the Convention, to the Imperial Government with the recommendation to accept it.

In spite of the delays caused by long distance, he hopes that he will receive in good time the necessary instructions to enable him to sign this Convention.  
(*Applause.*)

Record is made of the declaration of the first delegate of China.

His Excellency **Sir Julian Pauncefote** recalls that certain provisions adopted by the Conference will have to be submitted to parliamentary approval. It is therefore well understood that in signing them, the delegation of Great Britain intends to reserve entirely such approval.

[157] **Mr. Renault** says that he took occasion in his statement to point out this fact of which there can arise no doubt.

His Excellency Count **Nigra** says that Italy is in the same situation as England and he thinks that he must make a declaration identical with that of His Excellency **Sir JULIAN PAUNCEFOTE**.

**Mr. Léon Bourgeois** says that this reservation seemed so evident to him that he had believed it unnecessary to formulate it. The delegates of Great Britain and Italy having considered that they should make it the subject of a

declaration, he can only join them in stating that such is the general condition of parliamentary States.

Count **de Macedo** declares, in the name of the Portuguese plenipotentiaries, that in view of the limitations of their full powers, in the case where these plenipotentiaries intend to sign one or more of the Conventions and Declarations annexed to the Final Act, their signatures affixed after the respective instruments must only be considered as *ad referendum*.

The declaration of Count **DE MACEDO** is recorded.

The meeting adjourns.

# NINTH MEETING

JULY 28, 1899

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His Excellency Mr. Staal presiding.

The meeting opens at 3 o'clock.

The **President** states that the minutes of the meetings of July 25 and 27 have been distributed in proof-sheets and he begs the delegates kindly to return their copies to the secretariat as soon as possible with the necessary corrections.

Mr. **Renault** presents, in the name of the Drafting Committee of the Final Act, an oral report on the preamble and the final provisions of the "Convention for the pacific settlement of international disputes."

He says that the preamble merely repeats in a way the headings of the chapters of the Convention. The text is the work of the eminent reporter of the Third Commission. Therefore, it is unnecessary to speak of it at any length.

The final clauses are contained in Articles 58 to 61.

Article 58, which concerns ratification, and Article 61, which contemplates denunciation, are merely repetitions of provisions of the same kind inserted in the Conventions relating to the "laws and customs of war on land" and "adaptation to naval warfare of the principles of the Geneva Convention of 1864." They are indetical and concordant provisions. It is only necessary to refer back to the explanations previously given.

Articles 59 and 60 govern the matter of adhesion. They differ from the final clauses of the other Conventions, which are absolutely *open* except for the slight difference which has already been indicated with respect to the Convention relating to the Red Cross.

The present Convention contemplates two different conditions: a distinction has been made between Powers represented at the Conference and those which are not. Articles 59 and 60 provide for these two conditions.

The Powers represented at The Hague have two methods of becoming contracting parties: they may sign immediately, or before December 31, 1899. After that date, they will have to *adhere* to the Convention; but they have the *right* so to do. Their adhesion is subject to the same rules as those which govern the other two Conventions. This is the object of Article 59.

Article 60 provides for the case of Powers not represented at the Conference. Such Powers may adhere to the Convention, but the conditions of their adhesion are reserved for a future agreement between the contracting Powers. They, there-

fore, have not the same right as is recognized with respect to the Powers [158] represented.

This very simple solution was not reached in a very simple way. It gave rise to lively and lengthy discussions, which changed the modest character of the Drafting Committee and caused it to take up questions which were diplomatic



and political rather than questions of style and wording. The reporter believes that he cannot better state the different systems which were upheld in the committee than by repeating to the Conference the following address, delivered at the last session of the committee by Mr. ASSER, its president, which summarizes most completely the origin of Article 60.

GENTLEMEN: The discussions of international gatherings like our Conference assume at times the character of parliamentary debates, at others that of diplomatic negotiations.

In the matter with which the Drafting Committee has had to deal these last few days, our debates have assumed the latter character.

The result is that, on the one hand, the individual opinions of the members of our committee and of the delegates who have been good enough to lend us their aid are subject—still more than in discussions of a different nature—to the sanction of the Governments; and, on the other hand, to reach a practical result unanimity is indispensable.

If, from this double point of view, we consider the impression which the discussions of these last few days are bound to make, I believe I may state that all of us (delegates and Governments) desire that it may be possible to bring about adhesion to the Convention relating to the pacific settlement of international disputes by Powers who have not taken part in the Peace Conference; but that, at the same time, there exists a great difference of opinion as to whether the right to adhere should be granted absolutely or should be dependent upon certain conditions; and, in the latter case, what these conditions should be.

On the one hand, it was warmly argued that the Convention with which we are dealing should be completely assimilated to the other Conventions, the text of which has been decided upon by the Conference—which assimilation was, indeed, voted by the committee of examination of the Third Commission.

This implied the absolute right of all Powers to adhere to the Convention by means of a simple declaration.

On the other hand, it was maintained that this right should depend either on the express consent of all the contracting States, or on their tacit consent, which they would be considered to have given if, within a fixed time, no Power opposed the adhesion; or, lastly, on the consent of a majority, in the sense that the adhesion should, in case of opposition, be sanctioned by a vote of the Permanent Council, composed of all the diplomatic representatives of the Powers accredited to The Hague, a proposition which I had the honor of submitting to you, in the name of my Government, in order that no one Power might be given the right of veto in this matter.

Lastly, it was proposed that in case of opposition to the request for permission to adhere, the adhesion would affect only the Powers that had given their consent.

I cannot now repeat the arguments which were developed in favor of each of these systems.

I shall confine myself to stating that we have been unable to find a common ground for a unanimous agreement and that it is materially impossible, in the short time we still have, to reach such an agreement, especially since several delegates have not received specific instructions upon this point.

There is nothing left for us to do, therefore, but to choose between the two following systems:

Either to omit purely and simply the clause concerning the adhesion of Powers not represented;

Or, admitting the principle of their right to adhere, to leave it for a

future agreement between the Powers to determine the conditions under which adhesion may take place.

I venture to point out that it would appear from the discussions that the latter solution should be adopted.

It has been recognized by all that it is desirable to open the door to Powers that are not represented. If the Convention remained silent upon this point, it would by that very fact be a *closed* convention, a thing which we do not desire. If, on the contrary, it provides for a future agreement, such a provision is in effect an expression of the hope that this agreement can be brought about.

We are all persuaded that the Powers will endeavor to proceed with the greatest diligence, but we also know that ratifications cannot be obtained [159] between now and ratification by the Powers will serve to lessen the difficulties, which at present still exist, and that we shall be more and more convinced that the very nature of the Convention in question seems to admit of a broad and liberal system in the matter of the right to adhere.

The object of the Convention is the peaceful settlement of international disputes, and it determines the means of assuring such a result.

Well! the authors of this Convention must necessarily desire that all Powers, even those which are not represented here, join in this work of general interest.

Now especially, since the Convention contains no clause concerning compulsory arbitration, they must desire that, in case of a dispute between Powers not represented at the Conference, or between one of them and a Power which is represented, the Convention may bear the same fruits as when there is a dispute between contracting Powers.

Mr. RENAULT says that this address of Mr. ASSER is the best exposition of the reasons that he can give, and that he will add nothing further to the commentary upon the form and subject-matter of the initial and final clauses of the various Conventions, which he has been charged to submit.

The President takes the initiative in tendering the thanks of the Conference to Mr. RENAULT for the excellent report which he has presented.

The preamble and the final provisions of the Convention, which are adopted without discussion, are read in the following terms:

His Majesty ..... etc., etc.

*(Nomenclature of the sovereigns and heads of States in conformity with the list approved by the Conference and annexed to the present minutes.)*

Animated by a strong desire to work for the maintenance of general peace;

Resolved to promote by their best efforts the friendly settlement of international disputes;

Recognizing the solidarity uniting the members of the society of civilized nations;

Desirous of extending the empire of law, and strengthening the appreciation of international justice;

Convinced that the permanent institution of a tribunal of arbitration, accessible to all, in the midst of the independent Powers, will contribute effectively to this result;

Having regard to the advantages attending the general and regular organization of the procedure of arbitration;

Sharing the opinion of the august initiator of the International Peace Conference that it is expedient to record in an international agreement the principles of equity and right on which are based the security of States and the welfare of peoples;

Being desirous of concluding a Convention to this effect, have appointed as their plenipotentiaries, etc., etc.

*Final provisions*

ARTICLE 58

The present Convention shall be ratified as speedily as possible.

The ratifications shall be deposited at The Hague.

A *procès-verbal* shall be drawn up recording the receipt of each ratification, and a copy duly certified shall be sent, through the diplomatic channel, to all the Powers that were represented at the International Peace Conference at The Hague.

ARTICLE 59

Non-signatory Powers which have been represented at the International Peace Conference may adhere to the present Convention. For this purpose they must make known their adhesion to the contracting Powers by a written notification addressed to the Netherland Government, and communicated by it to all the other contracting Powers.

ARTICLE 60

The conditions on which the Powers which have not been represented at the International Peace Conference may adhere to the present Convention shall form the subject of a subsequent agreement between the contracting Powers.

[160] In the event of one of the high contracting Parties denouncing the present Convention, this denunciation would not take effect until a year after its notification made in writing to the Netherland Government, and by it communicated at once to all the other contracting Powers.

This denunciation shall have effect only in regard to the notifying Power.

In faith of which the respective plenipotentiaries have signed the present Convention and have affixed their seals thereto.

Done at The Hague, the . . . . ., one thousand eight hundred and ninety-nine, in a single original, which shall remain deposited in the archives of the Netherland Government, and copies of which, duly certified, shall be sent through the diplomatic channel to the contracting Powers.

On an observation by Chevalier **Descamps**, it is decided to separate the final provisions from those which precede them and which deal with arbitral procedure. Articles 58 and the following will appear under the heading of "*General provisions*."

It is likewise understood that Mr. **DESCAMPS** will be authorized to complete in this sense the report that he has presented to the Conference and to introduce in it the new texts which have just been adopted.

Jonkheer **van Karnebeek** presents his report in the name of the Commission on Correspondence which was organized under his presidency, with Messrs. **MÉREY VON KAPOŠ-MÉRE**, his Excellency Mr. **EYSCHEN**, **BASILY** and Dr. **RÖTH**.

The Commission has examined the different addresses, letters, and telegrams addressed to the Conference. The majority of them contained wishes for the success of the work of the Conference. They have been answered in appropriate terms by the chairman and by the Bureau.

The Commission has likewise found communicated to it a considerable number of resolutions emanating from private societies in favor of disarmament and of arbitration, as well as a quantity of pamphlets, etc., of which, to a great extent, the delegates have individually received copies. To these there was no

answer. Finally, it has had to pass by communications of various natures which concern matters foreign to the Conference or outside of its jurisdiction.

The report of Mr. **van Karnebeek** is approved.

The Conference is called for a meeting of signature July 29, at 10 o'clock, and for a closing meeting the same day at 3 o'clock.

The meeting adjourns.

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[161]            **Annex to Minutes of the Ninth Meeting, July 28**

**NOMENCLATURE OF THE SOVEREIGNS AND RULERS OF STATES  
REPRESENTED AT THE PEACE CONFERENCE**

His Majesty the Emperor of Germany, King of Prussia; His Majesty the Emperor of Austria, King of Bohemia, etc., and Apostolic King of Hungary; His Majesty the King of the Belgians; His Majesty the Emperor of China; His Majesty the King of Denmark; His Majesty the King of Spain and in His Name Her Majesty the Queen Regent of the Kingdom; the President of the United States of America; the President of the United States of Mexico; the President of the French Republic; Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India; His Majesty the King of the Hellenes; His Majesty the King of Italy; His Majesty the Emperor of Japan; His Royal Highness the Grand Duke of Luxemburg, Duke of Nassau; His Highness the Prince of Montenegro; Her Majesty the Queen of the Netherlands; His Imperial Majesty the Shah of Persia; His Majesty the King of Portugal and of the Algarves, etc.; His Majesty the King of Roumania; His Majesty the Emperor of All the Russias; His Majesty the King of Siam; His Majesty the King of Sweden and Norway; the Swiss Federal Council; His Majesty the Emperor of the Ottomans, and His Royal Highness the Prince of Bulgaria.

## CLOSING MEETING

JULY 29, 1899

His Excellency Mr. **Staal** presiding.

The meeting opens at 10 o'clock.

The **President** says that the minutes of the last meeting will be distributed in proof-sheets and he begs the delegates kindly to return their copies to the secretariat with the necessary corrections.

The **PRESIDENT** informs the Conference that the Final Act, the Conventions and Declarations of which it has adopted the text are ready to receive the signatures of the plenipotentiaries, and he suspends the meeting to permit the latter to sign the documents.

The meeting resumes its session at 3 o'clock.

The Honorary President, his Excellency Mr. **DE BEAUFORT**, Minister for Foreign Affairs, and his Excellency Mr. **PIERSON**, Minister of Finance, are present at the meeting.

Jonkheer **van Karnebeek** reads the table of signatures that have been affixed to the Final Act, the Conventions and the Declarations.

## TABLE OF SIGNATURES

## I.—FINAL ACT

Signed by all the Powers represented at the Conference.

Germany	Great Britain	Roumania
Austria-Hungary	Greece	Russia
Belgium	Italy	Serbia
China	Japan	Siam
Denmark	Luxemburg	Sweden and Norway
Spain	Montenegro	Switzerland
United States of America	Netherlands	Turkey
United Mexican States	Persia	Bulgaria
France	Portugal	

## II.—CONVENTIONS

*A.—Convention for the pacific settlement of international disputes*

Belgium	Greece	Roumania
Denmark	Montenegro	Russia
Spain	Netherlands	Siam
United States of America	Persia	Sweden and Norway
United Mexican States	Portugal	Bulgaria
France		

16 Powers

*B.—Convention on the laws and customs of war on land*

Belgium	Greece	Roumania
Denmark	Montenegro	Russia
Spain	Netherlands	Siam
United Mexican States	Persia	Sweden and Norway
France	Portugal	Bulgaria

15 Powers

*[163] C.—Convention for the adaptation to maritime warfare of the principles of the Geneva Convention*

Belgium	Greece	Roumania
Denmark	Montenegro	Russia
Spain	Netherlands	Siam
United Mexican States	Persia	Sweden and Norway
France	Portugal	Bulgaria

15 Powers

## III.—DECLARATIONS

*A.—Concerning the prohibition of the discharge of projectiles from balloons, etc.*

Belgium	Greece	Russia
Denmark	Montenegro	Siam
Spain	Netherlands	Sweden and Norway
United States of America	Persia	Turkey
United Mexican States	Portugal	Bulgaria
France	Roumania	

17 Powers

*B.—Concerning the prohibition of employing asphyxiating gas projectiles*

Belgium	Montenegro	Russia
Denmark	Netherlands	Siam
Spain	Persia	Sweden and Norway
United Mexican States	Portugal	Turkey
France	Roumania	Bulgaria
Greece		

16 Powers

*C.—Concerning the prohibition of bullets which expand, etc.*

Belgium	Greece	Russia
Denmark	Montenegro	Siam
Spain	Netherlands	Sweden and Norway
United Mexican States	Persia	Turkey
France	Roumania	Bulgaria

15 Powers

The **President** states that the Government of the Netherlands has asked him to bring to the knowledge of the Conference a letter addressed by Her Majesty the Queen of the Netherlands to His Holiness the Pope, advising him of the meeting of the Peace Conference at The Hague, as also the answer of His Holiness to that communication.

*Letter of Her Majesty the Queen of the Netherlands*

**MOST AUGUST PONTIFF:**

Your Holiness, whose eloquent voice has always been raised with such authority in favor of peace, having quite recently, in your allocution of the 11th of April, last, expressed those generous sentiments, more especially in regard to the relations among peoples, I considered it my duty to inform you that, at the request and upon the initiative of His Majesty the Emperor of All the Russias, I have called together, for the eighteenth of this month, a Conference at The Hague, which shall be charged with seeking the proper means of diminishing the present crushing military charges and to prevent war, if possible, or at least to mitigate its effects.

I am sure that your Holiness will look with sympathy upon the meeting of this Conference, and I shall be very happy if, in expressing to me the [164] assurance of that distinguished sympathy, you would kindly give your valuable moral support to the great work which shall be wrought out at my capital, according to the noble plans of the magnanimous Emperor of All the Russias.

I seize with alacrity upon the present occasion, Most August Pontiff, to renew to your Holiness the assurance of my high esteem and of my personal devotion.

(Signed) WILHELMINA.

HAUSBADEN, May 7, 1899.

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*Reply of His Holiness*

**YOUR MAJESTY:**

We cannot but find agreeable the letter by which Your Majesty, in announcing to us the meeting of the Conference for Peace in your capital, did us the courtesy to request our moral support for that assembly.

We hasten to express our keen sympathy for the august initiator of the Conference, and for Your Majesty, who extended to it such spontaneous and noble hospitality, and for the eminently moral and beneficent object toward which the labors already begun are tending.

We consider that it comes especially within our province not only to lend our moral support to such enterprises, but to cooperate actively in them, for the object in question is supremely noble in its nature and intimately bound up with our august ministry, which, through the divine founder of the Church, and in virtue of traditions of many secular instances, has been invested with the highest possible mission, that of being a mediator of peace. In fact, the authority of the supreme pontiff goes beyond the boundaries of nations; it embraces all peoples, to the end of federating them in the true peace of the gospel. His action to promote the general good of humanity rises above the special interest which the

chiefs of the various States have in view, and, better than any one else, his authority knows how to incline toward concord peoples of diverse nature and character.

History itself bears witness to all that has been done, by the influence of our predecessors, to soften the inexorable laws of war, to arrest bloody conflicts when controversies have arisen between princes, to terminate peacefully even the most acute differences between nations, to vindicate courageously the rights of the weak against the pretensions of the strong. Even unto us, notwithstanding the abnormal condition to which we are at present reduced, it has been given to put an end to grave differences between great nations such as Germany and Spain, and this very day we hope to be able soon to establish concord between two nations of South America which have submitted their controversy to our arbitration.

In spite of obstacles which may arise, we shall continue, since it rests with us to fulfil that traditional mission, without seeking any other object than the public weal, without envying any glory but that of serving the sacred cause of Christian civilization.

We beg Your Majesty to accept the expression of our great esteem and our best wishes for your prosperity and that of your kingdom.

From the VATICAN, May 29, 1899.

(Signed)

LEO P.P. XIII.

The **President** states that the text of these two letters shall be inserted in the report of the meeting, and then makes the following address:

GENTLEMEN: We have reached the end of our labors. Before we part and shake hands with each other for the last time in this beautiful Palace in the Wood, I come to ask you to join with me in repeating the tribute of our gratitude to the gracious sovereign of the Netherlands for the hospitality so lavishly showered upon us. The wishes which Her Majesty recently expressed in a voice at once charming and determined have been of good omen for the progress of our deliberations. May God crown with His blessings the reign of Her Majesty the Queen of the Netherlands, for the good of the noble country under her rule.

We beg Mr. DE BEAUFORT, in his capacity of honorary president of the Conference, kindly to lay the homage of our good wishes at the feet of Her Majesty. We likewise request his Excellency and the Netherland Government to accept the expression of our gratitude for the kindly assistance they have given us, which has so greatly facilitated our task.

[165] With all my heart I assume the rôle of your spokesman in warmly thanking the eminent statesmen and jurists who have presided over the work of our Commissions, of our subcommissions, and of our committees. They have displayed the rarest qualities, and we are happy to be able to congratulate them here.

Our reporters also deserve your gratitude. In their reports, which are indeed masterpieces, they have given the authorized commentary on the texts adopted.

Our secretariat has performed an arduous task with a zeal which is worthy of every praise. The accurate and complete *procès-verbaux* of our long and frequent sessions bear witness to this fact.

Finally, I have to thank you myself, gentlemen, for all the indulgent kindnesses which you have shown to your president. It is indeed one of the greatest honors of my long life, which has been devoted entirely to the service of my sovereigns and my country, to have been called by you to the presidency of our high



assembly. In the course of the years during which I have been an attentive witness of events which will form the history of our century, in some of which I have taken part as a modest workman, I have seen a gradually increasing influence of moral ideas in political relations. This influence has to-day reached a memorable stage.

His Majesty the Emperor of Russia, inspired by family traditions, as Mr. BEERNAERT has happily reminded us, and animated by constant solicitude for the welfare of nations, has in a measure opened the way for the realization of these conceptions. You, gentlemen, who are younger than your president, will no doubt make further progress along the road upon which we have set out.

After so long and laborious a session, while you have before your eyes the result of your labors, I shall refrain from burdening you with an historical account of what you have accomplished at the cost of so much effort. I shall confine myself to a few general observations.

In response to the call of the Emperor my august master, the Conference accepted the program outlined in the circulars of Count MOURAVIEFF, and examined it attentively and at length.

If the First Commission, which had taken charge of military questions, the limitation of armaments and of budgets, did not arrive at important material results, it is because the Commission met with technical difficulties and a series of allied considerations which it did not deem itself competent to examine. But the Conference has requested the various Governments to resume the study of these questions. The Conference unanimously supported the resolution proposed by the first delegate of France, to wit: "That the limitation of military charges, which at present weigh down the world, is greatly to be desired for the increase of the material and moral welfare of humanity."

The Conference likewise accepted all the humanitarian proposals referred to the Second Commission for examination.

In this class of questions the Conference was able to meet the long-expressed desire that the application of principles similar to those embodied in the Geneva Convention be extended to naval warfare.

Resuming a work started at Brussels twenty-five years ago under the auspices of Emperor Alexander II, the Conference succeeded in giving a more definite form to the laws and customs of war on land.

Such, gentlemen, are the positive results achieved by conscientious labor.

But the work which opens a new era, so to speak, in the domain of the law of nations, is the Convention for the peaceful settlement of international disputes. It bears as a heading the inscription: "The Maintenance of General Peace."

A few years ago, in closing the Bering Sea arbitration, an eminent French diplomat expressed himself as follows: "We have endeavored to preserve intact the fundamental principles of that august law of nations which spreads like the vault of heaven over all nations and borrows the laws of nature herself, to protect the peoples of the world one from the other by inculcating upon them the essentials of mutual good-will."

The Peace Conference, with the authority possessed by an assembly composed of civilized States, has endeavored also to safeguard, in matters of the utmost importance, the fundamental principles of international law. It has undertaken to give them precision, to develop them, and to apply them more completely. It has created upon several points a new law to meet new necessities, the

progress of international life, the exigencies of the public conscience, and the highest aspirations of humanity. Especially has it accomplished a work which will doubtless be called hereafter "The First International Code of Peace," to which we have given the more modest name of "Convention for the pacific settlement of international disputes."

[166] In inaugurating the sessions of the Conference, I pointed out as one of the principal elements of our combined endeavors—"the very essence of our task"—the realization of the progress so impatiently awaited in the matter of mediation and arbitration. I was not mistaken in believing that our labors in this direction would be of exceptional importance.

This work is to-day an accomplished fact. It bears witness to the great solicitude of the Governments for all that concerns the peaceful development of international relations and the well-being of nations.

No doubt this work is not perfect, but it is sincere, practical, and wise. It endeavors to conciliate, in safeguarding them, the two principles which are the foundation of the law of nations—the principle of the sovereignty of States and the principle of a just international solidarity. It gives precedence to that which unites over that which divides. It affirms that the dominant factor in the era upon which we are entering should be works which spring from the need of concord and which are made fruitful by the collaboration of States seeking the realization of their legitimate interests in a durable peace governed by justice.

The task accomplished by the Hague Conference in this direction is indeed meritorious and noble. It is in keeping with the magnanimous sentiments of the august initiator of the Conference. It will have the support of public opinion everywhere, and will, I hope, receive the commendation of history.

I shall not, gentlemen, enter into the details of the Act which many of us have just signed. They are set forth and analyzed in the incomparable report which is in your hands.

At the present moment it is perhaps premature to judge as a whole the work which has barely ended. We are still too near the cradle: we lack the perspective of distance. What is certain is that this work, undertaken upon the initiative of the Emperor my august master and under the auspices of the Queen of the Netherlands, will develop in the future. As the president of our Third Commission said on a memorable occasion, "The further we advance along the highway of time, the more clearly will the importance of this work appear."

Well, gentlemen, the first step has been taken. Let us unite our good-will and profit by experience.

The good seed is sown. Let the harvest come.

As for me, who have reached the end of my career and the decline of life, I consider it a supreme consolation to see new prospects opening up for the good of humanity and to be able to peer into the brightness of the future. (*Prolonged applause.*)

His Excellency Count Münster speaks as follows:

GENTLEMEN: You will allow me, as the senior member of this assembly, to answer the eloquent words which we have just heard, and you will join me in expressing our thanks to Mr. STAAL and Mr. VAN KARNEBEEK, the president and vice president of the Conference.

Mr. STAAL has greatly contributed to the success of our work. By his great courtesy to all of us, he was able to maintain good relations among all the dele-

gates. It is very rare that an assembly which has lasted two months and a half can show such perfect harmony as that which has always reigned in this hall.

Mr. VAN KARNEBEEK has been the prime mover of the Conference. He has worked more than any of us, and we owe him much. We have to thank him also for the great hospitality which we have found here, from the throne down to the most humble citizen.

Mr. VAN KARNEBEEK has found inspiration in the example of his august sovereign, who has honored us with a welcome which we shall never forget.

If the Conference has not realized all of its wishes—and its desires and illusions ran high—it will at least have a great influence upon the future, and the seeds which it has sown are sure to germinate. Its particular result will then be the influence which the meeting of so many eminent men cannot fail to have upon the mutual understanding of all nations. This Conference will be one of our most beautiful memories, and in this recollection two names will always shine, those of Mr. STAAL and Mr. VAN KARNEBEEK. I beg you to rise in their honor. (*Loud applause.*)

The President answers that he is deeply touched by the eloquent words which have just been spoken, and that he thanks Count MÜNSTER from the bottom of his heart, as well as all those whose sentiments he has expressed. In the many memories which he will take away from the Conference, that of the good relations which he has sustained with all his colleagues will never leave his recollection. (*Applause.*)

Jonkheer van Karnebeek says that he is equally touched by the words of Count MÜNSTER. He hesitates nevertheless to apply these words of praise to himself personally. If it is thought that he was able to do anything for [167] the success of the common labors, and if he has been in any way the personification of the spirit and the work of the Conference, Mr. VAN KARNEBEEK declares that he has but reflected the spirit which filled all the delegates, and of what they themselves have accomplished. (*Applause.*)

Baron d'Estournelles expresses himself as follows:

With the permission of our honored president I would like to submit to the Conference a personal wish before we separate.

Our work may be discussed and judged too modestly, but, as Count MÜNSTER has just said, it will never be doubted that we have worked conscientiously for two months and a half. We came to The Hague from all parts of the globe, without knowing one another, with more of prejudice and of uncertainty than of hope; to-day many prejudices have disappeared; and confidence and sympathy have arisen among us. It is owing to this concord, born of the devotion of all of us to the common work we have done, that we have been enabled to reach the first stage of progress; little by little it will be recognized that the results obtained can not be neglected, but that they constitute a fruitful germ. This germ, however, in order that it may develop, must be the object of constant solicitude, and this is the reason why we should all wish and hope that our Conference is not separating forever.

It should be the beginning; it ought not to be the end. Let us unite in the hope, gentlemen, that our countries, in calling other conferences such as this, may continue to assist in advancing the cause of civilization and of peace. (*Applause.*)

His Excellency Mr. de Beaufort makes the following address:

Before to-day's session closes I desire to say a few words.

It has been a source of happiness to the Government of the Netherlands to see you here. We have followed your deliberations with the greatest interest, and rejoice that your labors have borne fruit.

If the Peace Conference has not been able to realize the dreams of Utopians, the fact should not be lost sight of that in this respect it is like all gatherings of serious and intelligent men who seek a practical goal. If, on the other hand, the Conference has disproved the gloomy predictions of pessimists, who beheld in it merely a generous effort about to be lost in the utterance of a few wishes, it has proved by this very fact the clear-sightedness of the august monarch who chose a propitious time for its meeting.

It is not my desire to emphasize at the present moment the great importance of the results accomplished. It is true that it has not been possible to express unanimous agreement upon the principle of disarmament in a practical formula applicable to the internal legislation of the different countries and in harmony with their divergent needs. Let us remember in this connection the saying of an eminent historian, the Duke of BROGLIE, who a few weeks ago remarked in speaking of the Conference: "We are living at a time when as much account should be taken of the moral effect of an important measure as of its material and immediate results—indeed more account."

Without doubt the moral effect of your deliberations, already perceptible, will make itself felt more and more and will not fail to show itself strikingly in public opinion. It will also be of the utmost assistance to the Governments in their efforts to solve the problem of the limitation of armaments, a problem which will continue to be, and rightly, the serious and legitimate concern of the statesmen of all countries.

Permit me, before concluding, to express the hope that His Majesty the Emperor of Russia may find, in renewed energy to continue the great work he has undertaken, the most effectual consolation for the great and cruel sorrow through which he has passed. For ourselves, the memory of your sojourn here will remain for ever a bright spot in the annals of our country, because it is our firm conviction that this sojourn has opened a new era in the history of international relations between civilized peoples. (*Unanimous applause.*)

The President states that the sessions of the Peace Conference are closed, and that the meeting is adjourned.

## FINAL ACT OF THE INTERNATIONAL PEACE CONFERENCE

The International Peace Conference, convoked in the best interests of humanity by His Majesty the Emperor of All the Russias, assembled, on the invitation of the Government of Her Majesty the Queen of the Netherlands, in the Royal House in the Wood at The Hague, on May 18, 1899.

The Powers enumerated in the following list took part in the Conference, to which they appointed the delegates named below :

### Germany :

His Excellency Count MÜNSTER, German Ambassador at Paris, delegate plenipotentiary.

The BARON VON STENGEL, professor at the University of Munich, second delegate.

Dr. ZORN, Judicial Privy Councilor, professor at the University of Königsberg, scientific delegate.

Colonel GROSS VON SCHWARZHOFF, Commandant of the 5th Regiment of Infantry, No. 94, technical delegate.

Captain SIEGEL, Naval Attaché to the Imperial Embassy at Paris, technical delegate.

### Austria-Hungary :

His Excellency Count R. VON WELSERSHEIMB, Ambassador Extraordinary and Plenipotentiary, first delegate, plenipotentiary.

Mr. ALEXANDER OKOLICSÁNYI VON OKOLICSNA, Envoy Extraordinary and Minister Plenipotentiary at The Hague, second delegate, plenipotentiary.

Mr. CAJETAN MÉREY VON KAPO-S-MÉRE, Counselor of Embassy and Chief of Cabinet of the Minister for Foreign Affairs, assistant delegate.

Mr. HEINRICH LAMMASCH, professor at the University of Vienna, assistant delegate.

Mr. VICTOR VON KHUEPACH ZU REID, ZIMMERLEHEN UND HASLBURG, Lieutenant-Colonel on the General Staff, assistant delegate.

Count STANISLAUS SOLTYK, Captain of Corvette, assistant delegate.

### Belgium :

His Excellency Mr. AUGUSTE BEERNAERT, Minister of State, President of the Chamber of Representatives, delegate plenipotentiary.

The Count DE GRELLE ROGIER, Envoy Extraordinary and Minister Plenipotentiary at The Hague, delegate plenipotentiary.

The Chevalier DESCAMPS, Senator, delegate plenipotentiary.

**China :**

Mr. YANG Yŭ, Envoy Extraordinary and Minister Plenipotentiary at St. Petersburg, first delegate plenipotentiary.

Mr. LOU TSENG-TSIANG, second delegate.

Mr. HOO WEI-TEH, second delegate.

Mr. HO YEN-CHENG, Counselor of Legation, assistant delegate.

**Denmark :**

[2] Chamberlain FR. E. BILLE, Envoy Extraordinary and Minister Plenipotentiary at London, first delegate plenipotentiary.

Mr. J. G. F. VON SCHNACK, Colonel of Artillery, ex-Minister for War, second delegate plenipotentiary.

**Spain :**

His Excellency Duque DE TETUÁN, ex-Minister for Foreign Affairs, first delegate plenipotentiary.

Mr. W. RAMIREZ DE VILLA URRUTIA, Envoy Extraordinary and Minister Plenipotentiary at Brussels, delegate plenipotentiary.

Mr. ARTURO DE BAGUER, Envoy Extraordinary and Minister Plenipotentiary at The Hague, delegate plenipotentiary.

The Count DE SERRALLO, Colonel, Military Attaché to the Spanish Legation at Brussels, assistant delegate.

**The United States of America :**

His Excellency Mr. ANDREW D. WHITE, United States Ambassador at Berlin, delegate plenipotentiary.

The Honorable SETH LOW, president of the Columbia University at New York, delegate plenipotentiary.

Mr. STANFORD NEWEL, Envoy Extraordinary and Minister Plenipotentiary at The Hague, delegate plenipotentiary.

Captain ALFRED T. MAHAN, United States Navy, delegate plenipotentiary.

Mr. WILLIAM CROZIER, Captain of Artillery, delegate plenipotentiary.

Mr. FREDERICK W. HOLLS, advocate at New York, delegate and secretary to the delegation.

**The United States of Mexico :**

Mr. DE MIER, Envoy Extraordinary and Minister Plenipotentiary at Paris, delegate plenipotentiary.

Mr. ZENIL, Minister Resident at Brussels, delegate plenipotentiary.

**France :**

Mr. LÉON BOURGEOIS, ex-President of Council, ex-Minister for Foreign Affairs, member of the Chamber of Deputies, first delegate, plenipotentiary.

Mr. GEORGES BIHOUD, Envoy Extraordinary and Minister Plenipotentiary at The Hague, second delegate, plenipotentiary.

The Baron D'ESTOURNELLES DE CONSTANT, Minister Plenipotentiary, member of the Chamber of Deputies, third delegate, plenipotentiary.

Mr. MOUNIER, General of Brigade, technical delegate.

Mr. PÉPHAU, Rear Admiral, technical delegate.

Mr. LOUIS RENAULT, professor of the Faculty of Law at Paris, Legal Advisor to the Ministry for Foreign Affairs, technical delegate.

Great Britain and Ireland:

His Excellency the Right Honorable Sir JULIAN PAUNCEFOTE, member of Her Majesty's Privy Council, Ambassador Extraordinary and Plenipotentiary of the United Kingdom at Washington, first delegate, plenipotentiary.

Sir HENRY HOWARD, Envoy Extraordinary and Minister Plenipotentiary at The Hague, second delegate, plenipotentiary.

Sir JOHN A. FISHER, Vice Admiral, technical delegate.

Sir J. C. ARDAGH, Major General, technical delegate.

Lieutenant Colonel C. A COURT, Military Attaché at Brussels and The Hague, assistant technical delegate.

Greece:

Mr. N. DELYANNI, ex-President of the Council, ex-Minister for Foreign Affairs, Envoy Extraordinary and Minister Plenipotentiary at Paris, delegate plenipotentiary.

Italy :

His Excellency Count NIGRA, Italian Ambassador at Vienna, Senator of the Kingdom, first delegate, plenipotentiary.

Count A. ZANNINI, Envoy Extraordinary and Minister Plenipotentiary at [3] The Hague, second delegate, plenipotentiary.

The Chevalier GUIDO POMPILJ, Deputy in the Italian Parliament, third delegate, plenipotentiary.

The Chevalier LOUIS ZUCCARI, Major General, technical delegate.

The Chevalier AUGUSTE BIANCO, Captain, Naval Attaché to the Royal Embassy at London, technical delegate.

Japan:

The Baron HAYASHI, Envoy Extraordinary and Minister Plenipotentiary at St. Petersburg, first delegate, plenipotentiary.

Mr. I. MOTONO, Envoy Extraordinary and Minister Plenipotentiary at Brussels, second delegate, plenipotentiary.

Colonel UEHARA, technical delegate.

Captain SAKAMOTO, Japanese Navy, technical delegate.

Mr. NAGAO ARIGA, professor of international law at the Superior Military School and the Naval School at Tokio, technical delegate.

Luxemburg:

His Excellency Mr. EYSCHEN, Minister of State, President of the Grand Ducal Government, delegate plenipotentiary.

The Count DE VILLERS, Chargé d'Affaires at Berlin, delegate plenipotentiary.

Montenegro:

His Excellency Mr. STAAL, Privy Councilor, Russian Ambassador at London, delegate plenipotentiary.

The Netherlands:

Jonkheer A. P. C. VAN KARNEBEEK, ex-Minister for Foreign Affairs, member of the Second Chamber of the States-General, delegate plenipotentiary.

General J. C. C. DEN BEER POORTUGAEL, ex-Minister for War, member of the Council of State, delegate plenipotentiary.

Mr. T. M. C. ASSER, member of the Council of State, delegate plenipotentiary.

Mr. E. N. RAHUSEN, member of the First Chamber of the States-General, delegate plenipotentiary.

Captain A. P. TADEMA, Chief of the Staff of the Netherland Navy, technical delegate.

Persia:

Aide-de-Camp General MIRZA RIZA KHAN, ARFA-UD-DOVLEH, Envoy Extraordinary and Minister Plenipotentiary at St. Petersburg and Stockholm, first delegate, plenipotentiary.

MIRZA SAMAD KHAN, MOMTAS-ES-SALTANEH, Counselor of Legation at St. Petersburg, assistant delegate.

Portugal:

The Count DE MACEDO, Peer of the Kingdom, ex-Minister of Marine and the Colonies, Envoy Extraordinary and Minister Plenipotentiary at Madrid, delegate plenipotentiary.

Mr. D'ORNELLAS DE VASCONCELLOS, Peer of the Kingdom, Envoy Extraordinary and Minister Plenipotentiary at St. Petersburg, delegate plenipotentiary.

The Count DE SELIR, Envoy Extraordinary and Minister Plenipotentiary at The Hague, delegate plenipotentiary.

Captain AUGUSTO DE CASTILHO, technical delegate.

Captain on the General Staff AYRES D'ORNELLAS, technical delegate.

Roumania:

Mr. ALEXANDRE BELDIMAN, Envoy Extraordinary and Minister Plenipotentiary at Berlin, first delegate, plenipotentiary.

Mr. JEAN N. PAPINIU, Envoy Extraordinary and Minister Plenipotentiary at The Hague, second delegate, plenipotentiary.

Aide-de-Camp Colonel CONSTANTIN COANDA, Director of Artillery at the Ministry for War, technical delegate.

Russia:

His Excellency Mr. STAAL, Privy Councilor, Russian Ambassador at London, delegate plenipotentiary.

[4] Mr. MARTENS, permanent member of the Council of the Imperial Ministry for Foreign Affairs, Privy Councilor, delegate plenipotentiary.

Mr. BASILY, Councilor of State, Chamberlain, Director of the First Department of the Imperial Ministry for Foreign Affairs, delegate plenipotentiary.

Mr. RAFFALOVICH, Councilor of State, Agent in France of the Imperial Ministry for Finance, technical delegate.

Mr. GILINSKY, Colonel on the General Staff, technical delegate.



Count BARANTZEW, Colonel of Horse Artillery of the Guard, technical delegate.

Captain SCHEINE, Russian Naval Agent in France, technical delegate.

Mr. OVTCHINNIKOW, Naval Lieutenant, professor of jurisprudence, technical delegate.

Serbia:

Mr. MIYATOVITCH, Envoy Extraordinary and Minister Plenipotentiary at London and The Hague, delegate plenipotentiary.

Colonel MASCHINE, Envoy Extraordinary and Minister Plenipotentiary at Cettinje, delegate plenipotentiary.

Dr. VOISLAVE VELJKOVITCH, professor of the Faculty of Law at Belgrade, assistant delegate.

Siam:

His Excellency PHYA SURIYA NUVATR, Envoy Extraordinary and Minister Plenipotentiary at St. Petersburg and Paris, first delegate, plenipotentiary.

His Excellency PHYA VISUDDHA SURIYA SAKDI, Envoy Extraordinary and Minister Plenipotentiary at The Hague and London, second delegate, plenipotentiary.

Mr. CH. CORRAGONI D'ORELLI, Counselor of Legation, third delegate.

Mr. EDOUARD ROLIN, Siamese Consul General in Belgium, fourth delegate.

Sweden and Norway:

Baron BILDT, Envoy Extraordinary and Minister Plenipotentiary at the Royal Court of Italy, delegate plenipotentiary.

Sweden:

Colonel P. H. E. BRÄNDSTRÖM, Chief of 1st Regiment of Grenadiers of the Guard, technical delegate.

Captain C. A. M. DE HJULHAMMAR, Swedish Navy, technical delegate.

Norway:

Mr. W. KONOW, President of the Odelsting, technical delegate.

Major General J. J. THAULOW, Surgeon General of the Army and Navy, technical delegate.

Switzerland:

Dr. ARNOLD ROTH, Envoy Extraordinary and Minister Plenipotentiary at Berlin, delegate plenipotentiary.

Colonel ARNOLD KÜNZLI, National Councilor, delegate.

Mr. EDOUARD ODIER, National Councilor, delegate plenipotentiary.

Turkey:

His Excellency TURKHAN PASHA, ex-Minister for Foreign Affairs, member of the Council of State, first delegate, plenipotentiary.

NOURY BEY, Secretary General to the Ministry of Foreign Affairs, delegate plenipotentiary.

ABDULLAH PASHA, General of Division of the Staff, delegate plenipotentiary.

MEHEMED PASHA, Rear Admiral, delegate plenipotentiary.

Bulgaria :

Dr. DIMITRI I. STANCIOFF, Diplomatic Agent at St. Petersburg, first delegate, plenipotentiary.

Major CHRISTO HESSAPTCHIEFF, Military Attaché at Belgrade, second delegate, plenipotentiary.

[5] In a series of meetings, between May 18 and July 29, 1899, in which the constant desire of the delegates above-mentioned has been to realize, in the fullest manner possible, the generous views of the august initiator of the Conference and the intentions of their Governments, the Conference has agreed, for submission for signature by the plenipotentiaries, on the text of the Conventions and Declarations enumerated below and annexed to the present Act :

I. Convention for the pacific settlement of international disputes.

II. Convention respecting the laws and customs of war on land.

III. Convention for the adaptation to maritime warfare of the principles of the Geneva Convention of August 22, 1864.

IV. Three Declarations :

1. To prohibit the discharge of projectiles and explosives from balloons or by other similar new methods.

2. To prohibit the use of projectiles, the only object of which is the diffusion of asphyxiating or deleterious gases.

3. To prohibit the use of bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions.

These Conventions and Declarations shall form so many separate acts. These acts shall be dated this day, and may be signed up to December 31, 1899, by the plenipotentiaries of the Powers represented at the International Peace Conference at The Hague.

Guided by the same sentiments, the Conference has adopted unanimously the following resolution :

The Conference is of opinion that the restriction of military charges, which are at present a heavy burden on the world, is extremely desirable for the increase of the material and moral welfare of mankind.

It has, besides, uttered the following *voeux* :

1. The Conference, taking into consideration the preliminary step taken by the Swiss Federal Government for the revision of the Geneva Convention, utters the *voeu* that steps may be shortly taken for the assembly of a special Conference having for its object the revision of that Convention.

This *voeu* was voted unanimously.

2. The Conference utters the *voeu* that the questions of the rights and duties of neutrals may be inserted in the program of a Conference in the near future.

3. The Conference utters the *voeu* that the questions with regard to rifles and naval guns, as considered by it, may be studied by the Governments with the object of coming to an agreement respecting the employment of new types and calibres.

4. The Conference utters the *voeu* that the Governments, taking into consideration the proposals made at the Conference, may examine the possibility of an agreement as to the limitation of armed forces by land and sea, and of war budgets.

5. The Conference utters the *voeu* that the proposal which contemplates the

declaration of the inviolability of private property in naval warfare may be referred to a subsequent Conference for consideration.

6. The Conference utters the *vœu* that the proposal to settle the question of the bombardment of ports, towns, and villages by a naval force may be referred to a subsequent Conference for consideration.

The last five *vœux* were voted unanimously, saving some abstentions.

In faith of which, the plenipotentiaries have signed the present Act, and have affixed their seals thereto.

Done at The Hague, July 29, 1899, in a single original, which shall be deposited in the Ministry of Foreign Affairs, and copies of which, duly certified, shall be delivered to all the Powers represented at the Conference.

[6] <i>For Germany:</i>	(Signed) MÜNSTER.
<i>For Austria-Hungary:</i>	(Signed) WELSERSHEIMB.
	(Signed) OKOLICSÁNYI.
<i>For Belgium:</i>	(Signed) A. BEERNAERT.
	(Signed) Cte. DE GRELLE ROGIER.
	(Signed) Chr. DESCAMPS.
<i>For China:</i>	(Signed) YANG YŪ.
<i>For Denmark:</i>	(Signed) F. BILLE.
<i>For Spain:</i>	(Signed) El Duque DE TETUÁN.
	(Signed) W. R. DE VILLA URRUTIA.
<i>For the United States of America:</i>	(Signed) ARTURO DE BAGUER.
	(Signed) ANDREW D. WHITE.
	(Signed) SETH LOW.
	(Signed) STANFORD NEWEL.
	(Signed) A. T. MAHAN.
<i>For the United Mexican States:</i>	(Signed) WILLIAM CROZIER.
	(Signed) A. DE MIER.
<i>For France:</i>	(Signed) J. ZENIL.
	(Signed) LÉON BOURGEOIS.
	(Signed) G. BIHOUD.
	(Signed) D'ESTOURNELLES DE CONSTANT.
<i>For Great Britain and Ireland:</i>	(Signed) JULIAN PAUNCEFOTE.
	(Signed) HENRY HOWARD.
<i>For Greece:</i>	(Signed) N. DELYANNI.
<i>For Italy:</i>	(Signed) NIGRA.
	(Signed) A. ZANNINI.
	(Signed) POMPILJ.
<i>For Japan:</i>	(Signed) HAYASHI.
	(Signed) MOTONO.
<i>For Luxemburg:</i>	(Signed) EYSCHEN.
	(Signed) Cte. DE VILLERS.
<i>For Montenegro:</i>	(Signed) STAAL.
<i>For the Netherlands:</i>	(Signed) v. KARNEBEEK.
	(Signed) DEN BEER POORTUGAEL.
	(Signed) T. M. C. ASSER.
	(Signed) E. N. RAHUSEN.

<i>For Persia:</i>	(Signed) MIRZA RIZA KHAN, ARFA-UD-DOVLEH.
<i>For Portugal:</i>	(Signed) Conde DE MACEDO.
	(Signed) AGOSTINHO D'ORNELLAS DE VASCONCELLOS.
<i>For Roumania:</i>	(Signed) Conde DE SELIR.
	(Signed) A. BELDIMAN.
<i>For Russia:</i>	(Signed) J. N. PAPINIU.
	(Signed) STAAL.
	(Signed) MARTENS.
<i>For Serbia:</i>	(Signed) A. BASILY.
	(Signed) CHEDOMILLE MIYATOVITCH.
<i>For Siam:</i>	(Signed) A. MASCHINE.
	(Signed) PHYA SURIYA NUVATR.
<i>For Sweden and Norway:</i>	(Signed) VISUDDHA.
<i>For Switzerland:</i>	(Signed) BILDT.
	(Signed) ROTH.
<i>For Turkey:</i>	(Signed) ODIER.
	(Signed) TURKHAN.
	(Signed) M. NOURY.
	(Signed) ABDULLAH.
	(Signed) R. MEHEMED.
<i>For Bulgaria:</i>	(Signed) D. STANCIOFF.
	(Signed) Major HESSAPTCHIEFF.

[7]

### CONVENTION FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES

*(The Convention having to remain open for signature up to December 31, 1899, the Contracting Powers and their plenipotentiaries will be written in on that date in conformity with the following order adopted by the Conference in the plenary meeting of July 28, 1899):*

His Majesty the German Emperor, King of Prussia; His Majesty the Emperor of Austria, King of Bohemia, etc., and Apostolic King of Hungary; His Majesty the King of the Belgians; His Majesty the Emperor of China; His Majesty the King of Denmark; His Majesty the King of Spain and in His Name Her Majesty the Queen Regent of the Kingdom; the President of the United States of America; the President of the United Mexican States; the President of the French Republic; Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India; His Majesty the King of Hellenes; His Majesty the King of Italy; His Majesty the Emperor of Japan; His Royal Highness the Grand Duke of Luxemburg, Duke of Nassau; His Highness the Prince of Montenegro; Her Majesty the Queen of the Netherlands; His Imperial Majesty the Shah of Persia; His Majesty the King of Portugal and of the Algarves, etc.; His Majesty the King of Roumania; His Majesty the Emperor of All the Russias; His Majesty the King of Serbia; His Majesty the King of Siam; His Majesty the King of Sweden and Norway; the Swiss

Federal Council; His Majesty the Emperor of the Ottomans and His Royal Highness the Prince of Bulgaria;

Animated by a strong desire to work for the maintenance of general peace;  
Resolved to promote by their best efforts the friendly settlement of international disputes;

Recognizing the solidarity uniting the members of the society of civilized nations;

Desirous of extending the empire of law, and of strengthening the appreciation of international justice;

Convinced that the permanent institution of a tribunal of arbitration, accessible to all, in the midst of the independent Powers, will contribute effectively to this result;

Having regard to the advantages attending the general and regular organization of the procedure of arbitration;

Sharing the opinion of the august initiator of the International Peace Conference that it is expedient to record in an international agreement the principles of equity and right on which are based the security of States and the welfare of peoples;

Being desirous of concluding a Convention to this effect, have appointed as their plenipotentiaries, to wit:

[Here follow the names of plenipotentiaries.]

Who, after having communicated their full powers, found in good and due form, have agreed on the following provisions:

## [8] PART I.—THE MAINTENANCE OF GENERAL PEACE

### ARTICLE 1

With a view to obviating, as far as possible, recourse to force in the relations between States, the signatory Powers agree to use their best efforts to ensure the pacific settlement of international differences.

## PART II.—GOOD OFFICES AND MEDIATION

### ARTICLE 2

In case of serious disagreement or dispute, before an appeal to arms, the signatory Powers agree to have recourse, as far as circumstances allow, to the good offices or mediation of one or more friendly Powers.

### ARTICLE 3

Independently of this recourse, the signatory Powers deem it expedient that one or more Powers, strangers to the dispute, should, on their own initiative, and as far as circumstances may allow, offer their good offices or mediation to the States at variance.

Powers, strangers to the dispute have the right to offer good offices or mediation, even during the course of hostilities.

The exercise of this right can never be regarded by either of the parties in dispute as an unfriendly act.

## ARTICLE 4

The part of the mediator consists in reconciling the opposing claims and appeasing the feelings of resentment which may have arisen between the States at variance.

## ARTICLE 5

The functions of the mediator are at an end when once it is declared, either by one of the parties to the dispute, or by the mediator himself, that the means of reconciliation proposed by him are not accepted.

## ARTICLE 6

Good offices and mediation, undertaken either at the request of the parties in dispute, or on the initiative of Powers strangers to the dispute, have exclusively the character of advice and never have binding force.

## ARTICLE 7

The acceptance of mediation can not, unless there be an agreement to the contrary, have the effect of interrupting, delaying, or hindering mobilization or other measures of preparation for war.

If it takes place after the commencement of hostilities, the military operations in progress are not interrupted, unless there be an agreement to the contrary.

## ARTICLE 8

The signatory Powers are agreed in recommending the application, when circumstances allow, of special mediation in the following form:

In case of a serious difference endangering the peace, the States at variance choose respectively a Power, to which they entrust the mission of entering into direct communication with the Power chosen on the other side, with the object of preventing the rupture of pacific relations.

For the period of this mandate, the term of which, unless otherwise stipulated, can not exceed thirty days, the States in dispute cease from all direct communication on the subject of the dispute, which is regarded as referred exclusively to the mediating Powers, which must use their best efforts to settle it.

In case of a definite rupture of pacific relations, these Powers are charged with the joint task of taking advantage of any opportunity to restore peace.

## PART III.—INTERNATIONAL COMMISSIONS OF INQUIRY

## ARTICLE 9

In disputes of an international nature involving neither honor nor essential interests, and arising from a difference of opinion on points of fact, the signatory Powers deem it expedient that the parties who have not been able to come to an agreement by means of diplomacy, should, as far as circumstances allow, institute an international commission of inquiry, to facilitate a solution of these disputes by elucidating the facts by means of an impartial and conscientious investigation.

[9]

## ARTICLE 10

The international commissions of inquiry are constituted by special agreement between the parties in dispute.

The inquiry convention defines the facts to be examined and the extent of the powers of the commissioners.

It settles the procedure.

At the inquiry both sides must be heard.

The form and the periods to be observed, if not stated in the inquiry convention, are decided by the commission itself.

## ARTICLE 11

International commissions of inquiry are formed, unless otherwise stipulated, in the manner determined by Article 32 of the present Convention.

## ARTICLE 12

The Powers in dispute undertake to supply the international commission of inquiry, as fully as they may think possible, with all means and facilities necessary to enable it to become completely acquainted with and to accurately understand the facts in question.

## ARTICLE 13

The international commission of inquiry communicates its report to the Powers in dispute, signed by all the members of the commission.

## ARTICLE 14

The report of the international commission of inquiry is limited to a finding of facts, and has in no way the character of an award. It leaves to the Powers in dispute entire freedom as to the effect to be given to this finding.

## PART IV.—INTERNATIONAL ARBITRATION

CHAPTER I.—*The system of arbitration*

## ARTICLE 15

International arbitration has for its object the settlement of disputes between States by judges of their own choice and on the basis of respect for law.

## ARTICLE 16

In questions of a legal nature, and especially in the interpretation or application of international conventions, arbitration is recognized by the signatory Powers as the most effective and at the same time the most equitable means of settling disputes which diplomacy has failed to settle.

## ARTICLE 17

The arbitration convention is concluded for questions already existing or for questions which may arise eventually.

It may embrace any dispute or only disputes of a certain category.

## ARTICLE 18

The arbitration convention implies an engagement to submit in good faith to the arbitral award.

## ARTICLE 19

Independently of general or private treaties expressly stipulating recourse to arbitration as obligatory on the signatory Powers, these Powers reserve to themselves the right of concluding, either before the ratification of the present act or later, new agreements, general or private, with a view to extending obligatory arbitration to all cases which they may consider it possible to submit to it.

[10] CHAPTER II.—*The Permanent Court of Arbitration*

## ARTICLE 20

With the object of facilitating an immediate recourse to arbitration for international differences which it has not been possible to settle by diplomacy, the signatory Powers undertake to organize a Permanent Court of Arbitration, accessible at all times and operating, unless otherwise stipulated by the parties, in accordance with the rules of procedure inserted in the present Convention.

## ARTICLE 21

The Permanent Court shall be competent for all arbitration cases, unless the parties agree to institute a special tribunal.

## ARTICLE 22

An International Bureau, established at The Hague, serves as registry for the Court.

This Bureau is the channel for communications relative to the meetings of the Court.

It has the custody of the archives and conducts all the administrative business.

The signatory Powers undertake to communicate to the International Bureau at The Hague a duly certified copy of any conditions of arbitration arrived at between them and of any award concerning them delivered by a special tribunal.

They undertake likewise to communicate to the Bureau the laws, regulations, and documents eventually showing the execution of the awards given by the Court.

## ARTICLE 23

Within the three months following its ratification of the present act, each signatory Power shall select four persons at the most, of known competency in questions of international law, of the highest moral reputation, and disposed to accept the duties of arbitrators.

The persons thus selected shall be inscribed, as members of the Court, in a list which shall be notified to all the signatory Powers by the Bureau.

Any alteration in the list of arbitrators is brought by the Bureau to the knowledge of the signatory Powers.



Two or more Powers may agree on the selection in common of one or more members.

The same person can be selected by different Powers.

The members of the Court are appointed for a term of six years. Their appointments can be renewed.

In case of the death or retirement of a member of the Court, his place is filled in the same way as he was appointed.

#### ARTICLE 24

When the signatory Powers wish to have recourse to the Permanent Court for the settlement of a difference that has arisen between them, the arbitrators called upon to form the tribunal competent to decide this difference must be chosen from the general list of members of the Court.

Failing the composition of the arbitration tribunal by direct agreement of the parties, the following course is pursued:

Each party appoints two arbitrators, and these together choose an umpire.

If the votes are equally divided, the choice of the umpire is entrusted to a third Power, selected by the parties by common accord.

If an agreement is not arrived at on this subject, each party selects a different Power, and the choice of the umpire is made in concert by the Powers thus selected.

The tribunal being thus composed, the parties notify to the Bureau their determination to have recourse to the Court and the names of the arbitrators.

The tribunal of arbitration assembles on the date fixed by the parties.

The members of the Court, in the performance of their duties and out of their own country, enjoy diplomatic privileges and immunities.

#### ARTICLE 25

The tribunal of arbitration sits ordinarily at The Hague.

Except in cases of necessity, the place of session can only be altered by the tribunal with the assent of the parties.

[11]

#### ARTICLE 26

The International Bureau at The Hague is authorized to place its premises and staff at the disposal of the signatory Powers for the use of any special board of arbitration.

The jurisdiction of the Permanent Court may, within the conditions laid down in the regulations, be extended to disputes between non-signatory Powers, or between signatory Powers and non-signatory Powers, if the parties are agreed to have recourse to this tribunal.

#### ARTICLE 27

The signatory Powers consider it their duty, if a serious dispute threatens to break out between two or more of them, to remind these latter that the Permanent Court is open to them.

Consequently, they declare that the fact of reminding the parties at variance of the provisions of the present Convention, and the advice given to them, in the highest interests of peace, to have recourse to the Permanent Court, can only be regarded as in the nature of good offices.

## ARTICLE 28

A Permanent Administrative Council, composed of the diplomatic representatives of the signatory Powers accredited to The Hague and of the Netherland Minister for Foreign Affairs, who will act as president, shall be instituted in this town as soon as possible after the ratification of the present act by at least nine Powers.

This Council will be charged with the establishment and organization of the International Bureau, which will be under its direction and control.

It will notify to the Powers the constitution of the Court and will provide for its installation.

It will settle its rules of procedure and all other necessary regulations.

It will decide all questions of administration which may arise with regard to the operation of the Court.

It will have entire control over the appointment, suspension or dismissal of the officials and employees of the Bureau.

It will fix the payments and salaries, and control the general expenditure.

At meetings duly summoned the presence of five members is sufficient to render valid the discussions of the Council. The decisions are taken by a majority of votes.

The Council communicates to the signatory Powers without delay the regulations adopted by it. It addresses to them an annual report on the labors of the Court, the working of the administration, and the expenditure.

## ARTICLE 29

The expenses of the Bureau shall be borne by the signatory Powers in the proportion fixed for the International Bureau of the Universal Postal Union.

CHAPTER III.—*Arbitration procedure*

## ARTICLE 30

With a view to encouraging the development of arbitration, the signatory Powers have agreed on the following rules which shall be applicable to arbitration procedure, unless other rules have been agreed on by the parties.

## ARTICLE 31

The Powers which have recourse to arbitration sign a special act (*compromis*), in which are clearly defined the subject of the dispute and the extent of the arbitrators' powers. This act implies an engagement of the parties to submit in good faith to the arbitral award.

## ARTICLE 32

The duties of arbitrator may be conferred on one arbitrator alone or on several arbitrators selected by the parties as they please, or chosen by them from the members of the Permanent Court of Arbitration established by the present act.

Failing the composition of the tribunal by direct agreement of the parties, the following course is pursued:

[12] Each party appoints two arbitrators, and these together choose an umpire.

If the votes are equally divided the choice of the umpire is entrusted to a third Power, selected by the parties by common accord.

If an agreement is not arrived at on this subject, each party selects a different Power, and the choice of the umpire is made in concert by the Powers thus selected.

#### ARTICLE 33

When a sovereign or the chief of a State is chosen as arbitrator, the arbitration procedure is settled by him.

#### ARTICLE 34

The umpire is *ex officio* president of the tribunal.

When the tribunal does not include an umpire, it appoints its own president.

#### ARTICLE 35

In case of the death, retirement, or disability from any cause of one of the arbitrators, his place is filled in the same way as he was appointed.

#### ARTICLE 36

The tribunal's place of session is selected by the parties. Failing this selection the tribunal sits at The Hague.

The place thus fixed can not, except in case of necessity, be altered by the tribunal without the assent of the parties.

#### ARTICLE 37

The parties are entitled to appoint delegates or special agents to attend the tribunal to act as intermediaries between themselves and the tribunal.

They are further authorized to commit the defense of their rights and interests before the tribunal to counsel or advocates appointed by them for this purpose.

#### ARTICLE 38

The tribunal decides on the choice of languages to be used by itself, and to be authorized for use before it.

#### ARTICLE 39

As a general rule arbitration procedure comprises two distinct phases: pleadings and oral discussions.

The pleadings consist in the communication by the respective agents to the members of the tribunal and the opposite party of all printed or written acts and of all documents containing the grounds relied on in the case. This communication shall be made in the form and within the time fixed by the tribunal in accordance with Article 49.

The discussions consist in the oral development before the tribunal of the arguments of the parties.

#### ARTICLE 40

Every document produced by one party must be communicated to the other party.

## ARTICLE 41

The discussions are under the direction of the president.

They are only public if it be so decided by the tribunal, with the assent of the parties.

They are recorded in minutes drawn up by the secretaries appointed by the president. These minutes alone have an authentic character.

## ARTICLE 42

After the close of the pleadings, the tribunal is entitled to refuse discussion of all new papers or documents which one of the parties may wish to submit to it without the consent of the other party.

## ARTICLE 43

The tribunal is free to take into consideration new papers or documents to [13] which its attention may be drawn by the agents or counsel of the parties.

In this case, the tribunal has the right to require the production of these papers or documents, but is obliged to make them known to the opposite party.

## ARTICLE 44

The tribunal can, besides, require from the agents of the parties the production of all papers, and can demand all necessary explanations. In case of refusal, the tribunal takes note of it.

## ARTICLE 45

The agents and counsel of the parties are authorized to present orally to the tribunal all the arguments they may consider expedient in defense of their case.

## ARTICLE 46

They are entitled to raise objections and points. The decisions of the tribunal on these points are final, and can not form the subject of any subsequent discussion.

## ARTICLE 47

The members of the tribunal are entitled to put questions to the agents and counsel of the parties, and to ask them for explanations on doubtful points.

Neither the questions put, nor the remarks made by members of the tribunal in the course of the discussions can be regarded as an expression of opinion by the tribunal in general, or by its members in particular.

## ARTICLE 48

The tribunal is authorized to declare its competence in interpreting the *compromis* as well as the other treaties which may be invoked in the case, and in applying the principles of international law.

## ARTICLE 49

The tribunal is entitled to issue rules of procedure for the conduct of the case, to decide the forms and time in which each party must conclude its arguments, and to arrange all the formalities required for dealing with the evidence.

## ARTICLE 50

When the agents and counsel of the parties have submitted all the explanations and evidence in support of their case, the president pronounces the discussion closed.

## ARTICLE 51

The deliberations of the tribunal take place in private. Every decision is taken by a majority of members of the tribunal.

The refusal of a member to vote must be recorded in the minutes.

## ARTICLE 52

The award, given by a majority of votes, must state the reasons on which it is based. It is drawn up in writing and signed by each member of the tribunal.

Those members who are in the minority may record their dissent when signing.

## ARTICLE 53

The award is read out at a public sitting of the tribunal, the agents and counsel of the parties being present, or duly summoned to attend.

## ARTICLE 54

The award, duly pronounced and notified to the agents of the parties at variance, settles the dispute definitively and without appeal.

## ARTICLE 55

The parties can reserve in the *compromis* the right to demand the revision of the award.

In this case, and unless there be an agreement to the contrary, the demand must be addressed to the tribunal which pronounced the award. It can only be made on the ground of the discovery of some new fact which is of a nature to exercise a decisive influence upon the award and which, at the time [14] the discussion was closed, was unknown to the tribunal and to the party demanding the revision.

Proceedings for revision can only be instituted by a decision of the tribunal expressly recording the existence of the new fact, recognizing in it the character described in the preceding paragraph, and declaring the demand admissible on this ground.

The *compromis* fixes the period within which the demand for revision must be made.

## ARTICLE 56

The award is binding only on the parties who concluded the *compromis*.

When there is a question as to the interpretation of a convention to which Powers other than those in dispute are parties, the latter notify to the former the *compromis* they have concluded. Each of these Powers is entitled to intervene in the case. If one or more avail themselves of this right, the interpretation contained in the award is equally binding on them.

## ARTICLE 57

Each party pays its own expenses and an equal share of the expenses of the tribunal.

## GENERAL PROVISIONS

## ARTICLE 58

The present Convention shall be ratified as speedily as possible.

The ratifications shall be deposited at The Hague.

A *procès-verbal* shall be drawn up recording the receipt of each ratification, and a copy duly certified shall be sent, through the diplomatic channel, to all the Powers that were represented at the International Peace Conference at The Hague.

## ARTICLE 59

Non-signatory Powers which have been represented at the International Peace Conference may adhere to the present Convention. For this purpose they must make known their adhesion to the contracting Powers by a written notification addressed to the Netherland Government, and communicated by it to all the other contracting Powers.

## ARTICLE 60

The conditions on which the Powers which have not been represented at the International Peace Conference may adhere to the present Convention shall form the subject of a subsequent agreement between the contracting Powers.

## ARTICLE 61

In the event of one of the high contracting Parties denouncing the present Convention, this denunciation would not take effect until a year after its notification made in writing to the Netherland Government, and by it communicated at once to all the other contracting Powers.

This denunciation shall have effect only in regard to the notifying Power.

In faith of which the plenipotentiaries have signed the present Convention and have affixed their seals thereto.

Done at The Hague, July 29, 1899, in a single original, which shall remain deposited in the archives of the Netherland Government, and copies of which, duly certified, shall be sent through the diplomatic channel to the contracting Powers.

*For Germany:*

*For Austria-Hungary:*

*For Belgium:*

.....

.....

(Signed) A. BEERNAERT.

(Signed) Cte. DE GRELLE ROGIER.

(Signed) Chr. DESCAMPS.

*For China:*

*For Denmark:*

*For Spain:*

.....

(Signed) F. BILLE.

(Signed) El Duque DE TETUÁN.

(Signed) W. R. DE VILLA URRUTIA.

(Signed) ARTURO DE BAGUER.

[15] <i>For the United States of America:</i> <sup>1</sup>	(Signed) ANDREW D. WHITE. (Signed) SETH LOW. (Signed) STANFORD NEWEL. (Signed) A. T. MAHAN. (Signed) WILLIAM CROZIER.
<i>For the United Mexican States:</i>	(Signed) A. DE MIER. (Signed) J. ZENIL.
<i>For France:</i>	(Signed) LÉON BOURGEOIS. (Signed) G. BIHOUD. (Signed) D'ESTOURNELLES DE CONSTANT.
<i>For Great Britain and Ireland:</i>	.....
<i>For Greece:</i>	(Signed) N. DELYANNI.
<i>For Italy:</i>	.....
<i>For Japan:</i>	.....
<i>For Luxemburg:</i>	.....
<i>For Montenegro:</i>	(Signed) STAAL.
<i>For the Netherlands:</i>	(Signed) v. KARNEBEEK. (Signed) DEN BEER POORTUGAEL. (Signed) T. M. C. ASSER. (Signed) E. N. RAHUSEN.
<i>For Persia:</i>	(Signed) MIRZA RIZA KHAN, ARFA- UD-DOVLEH.
<i>For Portugal:</i>	(Signed) Conde de MACEDO. (Signed) AGOSTINHO D'ORNELLAS DE VASCONCELLOS.
<i>For Roumania:</i> <sup>2</sup>	(Signed) Conde de SELIR.
<i>For Russia:</i>	(Signed) A. BELDIMAN. (Signed) J. N. PAPINIU. (Signed) STAAL. (Signed) MARTENS. (Signed) A. BASILY.
<i>For Serbia:</i>	.....
<i>For Siam:</i>	(Signed) PHYA SURIYA NUVATR. (Signed) VISUDDHA.
<i>For Sweden and Norway:</i>	(Signed) BILDT.
<i>For Switzerland:</i>	.....
<i>For Turkey:</i>	.....
<i>For Bulgaria:</i>	(Signed) D. STANCIOFF. (Signed) Major HESSAPTCHIEFF.

<sup>1</sup> Under reservation of the declaration made at the plenary session of the Conference on July 25, 1899.

<sup>2</sup> Under the reservations formulated with respect to Articles 16, 17, and 19 of the present Convention (15, 16, and 18 of the project presented by the committee of examination), and recorded in the *procès-verbal* of the meeting of the Third Commission of July 20, 1899.

[16]

**CONVENTION FOR THE ADAPTATION TO MARITIME WARFARE  
OF THE PRINCIPLES OF THE GENEVA CONVENTION OF  
AUGUST 22, 1864**

*(For the heading see the Convention for the pacific settlement of international disputes.)*

Animated alike by the desire to diminish as far as depends on them the inevitable evils of war, and wishing with this object to adapt to maritime warfare the principles of the Geneva Convention of August 22, 1864, have resolved to conclude a convention for this purpose.

They have in consequence appointed the following as their plenipotentiaries:  
[Here follow the names of plenipotentiaries.]

Who, after having communicated their full powers, found in good and due form, have agreed upon the following provisions:

**ARTICLE 1**

Military hospital ships, that is to say, ships constructed or assigned by States specially and solely with the view to assist the wounded, sick and shipwrecked, the names of which have been communicated to the belligerent Powers at the commencement or during the course of hostilities, and in any case before they are employed, shall be respected and can not be captured while hostilities last.

These ships, moreover, are not on the same footing as men-of-war as regards their stay in a neutral port.

**ARTICLE 2**

Hospital ships, equipped wholly or in part at the expense of private individuals or officially recognized relief societies, shall likewise be respected and exempt from capture, if the belligerent Power to which they belong has given them an official commission and has notified their names to the hostile Power at the commencement of or during hostilities, and in any case before they are employed.

These ships shall be provided with a certificate from the competent authorities, declaring that they had been under their control while fitting out and on final departure.

**ARTICLE 3**

Hospital ships, equipped wholly or in part at the expense of private individuals or officially recognized societies of neutral countries, shall be respected and exempt from capture, if the neutral Power to which they belong has given them an official commission and has notified their names to the belligerent Powers at the commencement of or during hostilities, and in any case before they are employed.

**ARTICLE 4**

The ships mentioned in Articles 1, 2 and 3 shall afford relief and assistance to the wounded, sick, and shipwrecked of the belligerents without distinction of nationality.

The Governments undertake not to use these ships for any military purpose.



These ships must in nowise hamper the movements of the combatants.

[17] During and after an engagement they will act at their own risk and peril.

The belligerents will have the right to control and search them; they can refuse to help them, order them off, make them take a certain course, and put a commissioner on board; they can even detain them, if important circumstances require it.

As far as possible the belligerents shall enter in the log of the hospital ships the orders which they give them.

#### ARTICLE 5

Military hospital ships shall be distinguished by being painted white outside with a horizontal band of green about a metre and a half in breadth.

The ships mentioned in Articles 2 and 3 shall be distinguished by being painted white outside with a horizontal band of red about a metre and a half in breadth.

The boats of the ships above-mentioned, as also small craft which may be used for hospital work, shall be distinguished by similar painting.

All hospital ships shall make themselves known by hoisting, with their national flag, the white flag with a red cross provided by the Geneva Convention.

#### ARTICLE 6

Neutral merchantmen, yachts, or vessels, having, or taking on board, sick, wounded, or shipwrecked of the belligerents, cannot be captured for so doing, but they are liable to capture for any violation of neutrality they may have committed.

#### ARTICLE 7

The religious, medical, and hospital staff of any captured ship is inviolable, and its members cannot be made prisoners of war. On leaving the ship they take with them the objects and surgical instruments which are their own private property.

This staff shall continue to discharge its duties while necessary, and can afterwards leave when the commander in chief considers it possible.

The belligerents must guarantee to the said staff when it has fallen into their hands the enjoyment of their salaries intact.

#### ARTICLE 8

Sailors and soldiers on board when sick or wounded, to whatever nation they belong, shall be protected and tended by the captors.

#### ARTICLE 9

The shipwrecked, wounded, or sick of one of the belligerents who fall into the power of the other, are prisoners of war. The captor must decide, according to circumstances, whether to keep them, send them to a port of his own country, to a neutral port, or even to an enemy port. In this last case, prisoners thus repatriated cannot serve again while the war lasts.

ARTICLE 10<sup>1</sup>

The shipwrecked, wounded, or sick, who are landed at a neutral port, with the consent of the local authorities, must, unless an arrangement is made to the contrary between the neutral State and the belligerent States, be guarded by the neutral State so as to prevent their again taking part in the operations of the war.

The expenses of tending them in hospital and interning them shall be borne by the State to which the shipwrecked, sick, or wounded belong.

## ARTICLE 11

The rules contained in the above articles are binding only on the contracting Powers, in case of war between two or more of them.

The said rules shall cease to be binding from the time when, in a war between the contracting Powers, one of the belligerents is joined by a non-contracting Power.

## ARTICLE 12

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

On the receipt of each ratification a *procès-verbal* shall be drawn up, a copy of which, duly certified, shall be sent through the diplomatic channel to all the contracting Powers.

## ARTICLE 13

[18] Non-signatory Powers which have accepted the Geneva Convention of August 22, 1864, may adhere to the present Convention.

For this purpose they must make their adhesion known to the contracting Powers by means of a written notification addressed to the Netherland Government, and by it communicated to all the other contracting Powers.

## ARTICLE 14

In the event of one of the high contracting Parties denouncing the present Convention, such denunciation shall not take effect until a year after the notification made in writing to the Netherland Government, and forthwith communicated by it to all the other contracting Powers.

This denunciation shall have effect only in regard to the notifying Power.

In faith of which the respective plenipotentiaries have signed the present Convention and have affixed their seals thereto.

Done at The Hague, July 29, 1899, in a single original, which shall remain deposited in the archives of the Netherland Government, and copies of which, duly certified, shall be sent through the diplomatic channel to the contracting Powers.

<sup>1</sup> [Germany, the United States, Great Britain, and Turkey signed this Convention under reservation of Article 10. On an understanding subsequently reached by the Government of the Netherlands and the signatory Powers it was agreed to exclude this article from the ratifications of the Convention. The Article was, however, adopted in the above form at the Second Hague Conference and appears as Article 15 in Convention No. 10, *Actes et documents*, vol. i, p. 661; this translation, p. 653.]

<i>For Germany:</i> <sup>1</sup>	.....
<i>For Austria-Hungary:</i>	.....
<i>For Belgium:</i>	(Signed) A. BEERNAERT.
	(Signed) Cte. DE GRELLE ROGIER.
	(Signed) Chr. DESCAMPS.
<i>For China:</i>	.....
<i>For Denmark:</i>	(Signed) F. BILLE.
<i>For Spain:</i>	(Signed) El Duque DE TETUÁN.
	(Signed) W. R. DE VILLA URRUTIA.
	(Signed) ARTURO DE BAGUER.
<i>For the United States of America:</i> <sup>1</sup>	.....
<i>For the United Mexican States:</i>	(Signed) A. DE MIER.
	(Signed) J. ZENIL.
<i>For France:</i>	(Signed) LÉON BOURGEOIS.
	(Signed) G. BIHOURD.
	(Signed) D'ESTOURNELLES DE CONSTANT.
<i>For Great Britain and Ireland:</i> <sup>1</sup>	.....
<i>For Greece:</i>	(Signed) N. DELYANNI.
<i>For Italy:</i>	.....
<i>For Japan:</i>	.....
<i>For Luxembourg:</i>	.....
<i>For Montenegro:</i>	(Signed) STAAL.
<i>For the Netherlands:</i>	(Signed) v. KARNEBEEK.
	(Signed) DEN BEER POORTUGAEL.
	(Signed) T. M. C. ASSER.
	(Signed) E. N. RAHUSEN.
<i>For Persia:</i>	(Signed) MIRZA RIZA KHAN, ARFA- UD-DOVLEH.
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	(Signed) AGOSTINHO D'ORNELLAS DE VASCONCELLOS.
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<i>For Russia:</i>	(Signed) STAAL.
	(Signed) MARTENS.
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<i>For Siam:</i>	(Signed) PHYA SURIYA NUVATR.
	(Signed) VISUDDHA.
<i>For Sweden and Norway:</i>	(Signed) BILDT.
<i>For Switzerland:</i>	.....
<i>For Turkey:</i>	.....
<i>For Bulgaria:</i>	(Signed) D. STANCIOFF.
	(Signed) Major HESSAPTCHIEFF.

<sup>1</sup> [Signed later. See footnote to Article 10, *supra*.]

[19]

**CONVENTION RESPECTING THE LAWS AND CUSTOMS  
OF WAR ON LAND**

*(For the heading see the Convention for the pacific settlement of international disputes.)*

Considering that, while seeking means to preserve peace and prevent armed conflicts between nations, it is likewise necessary to bear in mind the case where an appeal to arms may be brought about by events which their solicitude could not avert;

Animated by the desire to serve, even in this extreme case, the interests of humanity and the ever progressive needs of civilization;

Thinking it important, with this object, to revise the general laws and customs of war, either with the view of defining them with greater precision, or of confining them within such limits as would mitigate their severity as far as possible;

Inspired by these views which are enjoined at the present day, as they were twenty-five years ago at the time of the Brussels Conference in 1874, by a wise and generous forethought;

Have, in this spirit, adopted a great number of provisions, the object of which is to define and govern the usages of war on land.

According to the views of the high contracting Parties, these provisions, the wording of which has been inspired by the desire to diminish the evils of war, so far as military requirements permit, are intended to serve as a general rule of conduct for the belligerents in their mutual relations and in their relations with the inhabitants.

It has not, however, been found possible at present to concert regulations covering all the circumstances which arise in practice;

On the other hand, the high contracting Parties clearly do not intend that unforeseen cases should, in the absence of a written undertaking, be left to the arbitrary judgment of military commanders.

Until a more complete code of the laws of war has been issued, the high contracting Parties deem it expedient to declare that, in cases not included in the regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and from the dictates of the public conscience.

They declare that it is in this sense especially that Articles 1 and 2 of the Regulations adopted must be understood.

The high contracting Parties, wishing to conclude a Convention to this effect, have appointed as their plenipotentiaries, to wit:

[Here follow the names of plenipotentiaries.]

Who, after communication of their full powers, found in good and due form, have agreed upon the following:

**ARTICLE 1**

The high contracting Parties shall issue instructions to their armed land forces, which shall be in conformity with the "Regulations respecting the laws and customs of war on land" annexed to the present Convention.

## ARTICLE 2

The provisions contained in the Regulations referred to in Article 1 are only binding on the contracting Powers, in case of war between two or more of [20] them.

These provisions shall cease to be binding from the time when, in a war between contracting Powers, a non-contracting Power joins one of the belligerents.

## ARTICLE 3

The present Convention shall be ratified as speedily as possible.

The ratifications shall be deposited at The Hague.

A *procès-verbal* shall be drawn up recording the receipt of each ratification, and a copy, duly certified, shall be sent through the diplomatic channel to all the contracting Powers.

## ARTICLE 4

Non-signatory Powers are allowed to adhere to the present Convention.

For this purpose they must make their adhesion known to the contracting Powers by means of a written notification, addressed to the Netherland Government, and by it communicated to all the other contracting Powers.

## ARTICLE 5

In the event of one of the high contracting Parties denouncing the present Convention, such denunciation would not take effect until a year after the written notification made to the Netherland Government, and by it at once communicated to all the other contracting Powers.

This denunciation shall have effect only in regard to the notifying Power.

In faith of which the plenipotentiaries have signed the present Convention and have affixed their seals thereto.

Done at The Hague, July 29, 1899, in a single original, which shall remain deposited in the archives of the Netherland Government, and copies of which, duly certified, shall be sent through the diplomatic channel to the contracting Powers.

*For Germany:*

*For Austria-Hungary:*

*For Belgium:*

.....

.....

(Signed) A. BEERNAERT.

(Signed) Cte. DE GRELLÉ ROGIER.

(Signed) Chr. DESCAMPS.

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(Signed) W. R. DE VILLA URRUTIA.

(Signed) ARTURO DE BAGUER.

*For the United States of America:*

*For the United Mexican States:*

.....

(Signed) A. DE MIER.

(Signed) J. ZENIL.

<i>For France:</i>	(Signed) LÉON BOURGEOIS. (Signed) G. BIHOUD. (Signed) D'ESTOURNELLES DE CONSTANT.
<i>For Great Britain and Ireland:</i>	.....
<i>For Greece:</i>	(Signed) N. DELYANNI.
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[21] <i>For Russia:</i>	(Signed) STAAL. (Signed) MARTENS. (Signed) A. BASILY.
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<i>For Switzerland:</i>	.....
<i>For Turkey:</i>	.....
<i>For Bulgaria:</i>	(Signed) D. STANCIOFF. (Signed) Major HESSAPTCHIEFF.

### Annex to the Convention

## REGULATIONS RESPECTING THE LAWS AND CUSTOMS OF WAR ON LAND

### SECTION I.—ON BELLIGERENTS

#### CHAPTER I.—*The qualifications of belligerents*

#### ARTICLE 1

The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions:

1. That they be commanded by a person responsible for his subordinates;
2. That they have a fixed distinctive emblem recognizable at a distance;
3. That they carry arms openly; and

4. That they conduct their operations in accordance with the laws and customs of war.

In countries where militia or volunteer corps constitute the army, or form part of it, they are included under the denomination "army."

#### ARTICLE 2

The population of a territory which has not been occupied who, on the approach of the enemy, spontaneously take up arms to resist the invading troops without having had time to organize themselves in accordance with Article 1, shall be regarded as belligerents if they respect the laws and customs of war.

#### ARTICLE 3

The armed forces of the belligerent parties may consist of combatants and non-combatants. In case of capture by the enemy, both have a right to be treated as prisoners of war.

### CHAPTER II.—*Prisoners of war*

#### ARTICLE 4

Prisoners of war are in the power of the hostile Government, but not in that of the individuals or corps who captured them.

They must be humanely treated.

All their personal belongings, except arms, horses, and military papers, remain their property.

#### ARTICLE 5

Prisoners of war may be interned in a town, fortress, camp, or other place, under obligation not to go beyond certain fixed limits; but they can only be placed in confinement as an indispensable measure of safety.

#### ARTICLE 6

[22] The State may utilize the labor of prisoners of war according to their rank and aptitude. The tasks shall not be excessive and shall have no connection with the operations of the war.

Prisoners may be authorized to work for the public service, for private persons, or on their own account.

Work done for the State is paid for at the rates in force for work of a similar kind done by soldiers of the national army.

When the work is for other branches of the public service or for private persons, the conditions are settled in agreement with the military authorities.

The wages of the prisoners shall go towards improving their position, and the balance shall be paid them at the time of their release, after deducting the cost of their maintenance.

#### ARTICLE 7

The Government into whose hands prisoners of war have fallen is charged with their maintenance.

In the absence of a special agreement between the belligerents, prisoners of war shall be treated as regards food, quarters, and clothing, on the same footing as the troops of the Government which has captured them.

## ARTICLE 8

Prisoners of war shall be subject to the laws, regulations, and orders in force in the army of the State in whose power they are. Any act of insubordination justifies the adoption towards them of such measures of severity as may be necessary.

Escaped prisoners who are retaken before being able to rejoin their army or before leaving the territory occupied by the army that captured them are liable to disciplinary punishment.

Prisoners who, after succeeding in escaping, are again taken prisoners, are not liable to any punishment for the previous flight.

## ARTICLE 9

Every prisoner of war is bound to give, if questioned on the subject, his true name and rank, and if he infringes this rule, he is liable to a curtailment of the advantages accorded to the prisoners of war of his class.

## ARTICLE 10

Prisoners of war may be set at liberty on parole if the laws of their country allow it, and, in such cases, they are bound, on their personal honor, scrupulously to fulfil, both towards their own Government and the Government by which they were made prisoners, the engagements they have contracted.

In such cases their own Government is bound neither to require of nor accept from them any service incompatible with the parole given.

## ARTICLE 11

A prisoner of war can not be compelled to accept his liberty on parole; similarly the hostile Government is not obliged to accede to the request of the prisoner to be set at liberty on parole.

## ARTICLE 12

Any prisoner of war liberated on parole and retaken bearing arms against the Government to which he had pledged his honor, or against the allies of that Government, forfeits his right to be treated as a prisoner of war, and can be brought before the courts.

## ARTICLE 13

Individuals who follow an army without directly belonging to it, such as newspaper correspondents and reporters, sutlers and contractors, who fall into the enemy's hands, and whom the latter thinks fit to detain, are entitled to be treated as prisoners of war, provided they are in possession of a certificate from the military authorities of the army they were accompanying.

## ARTICLE 14

[23] An information bureau relative to prisoners of war is instituted, on the commencement of hostilities, in each of the belligerent States and, when necessary, in neutral countries which have received belligerents in their territory. The function of this bureau is to reply to all inquiries about the prisoners, to receive from the various services concerned all the information necessary to enable it to make out an individual return for each prisoner of war. It is kept



informed of internments and transfers, as well as of admissions into hospital and deaths.

It is likewise the function of the information bureau to receive and collect all objects of personal use, valuables, letters, etc., found on the field of battle or left by prisoners who have died in hospitals or ambulances, and to forward them to those concerned.

#### ARTICLE 15

Relief societies for prisoners of war, which are properly constituted in accordance with the laws of their country and with the object of serving as the channel for charitable effort shall receive from the belligerents, for themselves and their duly accredited agents, every facility for the efficient performance of their humane task within the bounds imposed by military necessities and administrative regulations. Agents of these societies may be admitted to the places of internment for the purpose of distributing relief, as also to the halting-places of repatriated prisoners, if furnished with a personal permit by the military authorities, and on giving an undertaking in writing to comply with all measures of order and police which the latter may issue.

#### ARTICLE 16

Information bureaux enjoy the privilege of free postage. Letters, money orders, and valuables, as well as parcels by post, intended for prisoners of war, or dispatched by them, shall be exempt from all postal duties in the countries of origin and destination, as well as in the countries they pass through.

Presents and relief in kind for prisoners of war shall be admitted free of all import or other duties, as well as of payments for carriage by State railways.

#### ARTICLE 17

Officers taken prisoners may receive, if necessary, the full pay allowed them in this position by their country's regulations, the amount to be refunded by their Government.

#### ARTICLE 18

Prisoners of war shall enjoy complete liberty in the exercise of their religion, including attendance at the services of whatever church they may belong to, on the sole condition that they comply with the measures of order and police issued by the military authorities.

#### ARTICLE 19

The wills of prisoners of war are received or drawn up in the same way as for soldiers of the national army.

The same rules shall be observed regarding death certificates as well as for the burial of prisoners of war, due regard being paid to their grade and rank.

#### ARTICLE 20

After the conclusion of peace, the repatriation of prisoners of war shall be carried out as quickly as possible.

CHAPTER III.—*The sick and wounded*

## ARTICLE 21

The obligations of belligerents with regard to the sick and wounded are governed by the Geneva Convention of August 22, 1864, subject to any modifications which may be introduced into it.

[24]

## SECTION II.—ON HOSTILITIES

CHAPTER I.—*Means of injuring the enemy, sieges, and bombardments*

## ARTICLE 22

The right of belligerents to adopt means of injuring the enemy is not unlimited.

## ARTICLE 23

In addition to the prohibitions provided by special conventions, it is especially forbidden:

- (a) To employ poison or poisoned weapons;
- (b) To kill or wound treacherously individuals belonging to the hostile nation or army;
- (c) To kill or wound an enemy who, having laid down his arms, or having no longer means of defense, has surrendered at discretion;
- (d) To declare that no quarter will be given;
- (e) To employ arms, projectiles, or material calculated to cause unnecessary suffering;
- (f) To make improper use of a flag of truce, of the national flag, or of the military insignia and uniform of the enemy, as well as the distinctive badges of the Geneva Convention;
- (g) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war.

## ARTICLE 24

Ruses of war and the employment of measures necessary for obtaining information about the enemy and the country are considered permissible.

## ARTICLE 25

It is forbidden to attack or bombard towns, villages, dwellings or buildings that are not defended.

## ARTICLE 26

The officer in command of an attacking force must, before commencing a bombardment, except in cases of assault, do all in his power to warn the authorities.

## ARTICLE 27

In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes.

It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand.

#### ARTICLE 28

It is forbidden to give over to pillage even a town or place taken by storm.

### CHAPTER II.—*Spies*

#### ARTICLE 29

A person can only be considered a spy when, acting clandestinely or on false pretences, he obtains or endeavors to obtain information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party.

Thus, soldiers not wearing a disguise who have penetrated into the zone of operations of the hostile army, for the purpose of obtaining information, are not considered spies. Similarly, the following are not considered spies: Soldiers and civilians, carrying out their mission openly, entrusted with the delivery of dispatches intended either for their own army or for the enemy's army. To this class belong likewise persons sent in balloons for the purpose of carrying dispatches and, generally, of maintaining communications between the different parts of an army or a territory.

#### ARTICLE 30

[25] A spy taken in the act shall not be punished without previous trial.

#### ARTICLE 31

A spy who, after rejoining the army to which he belongs, is subsequently captured by the enemy, is treated as a prisoner of war, and incurs no responsibility for his previous acts of espionage.

### CHAPTER III.—*Parlementaires*

#### ARTICLE 32

A person is regarded as a parlementaire who has been authorized by one of the belligerents to enter into communication with the other, and who advances bearing a white flag. He has a right to inviolability, as well as the trumpeter, bugler or drummer, the flag-bearer and the interpreter who may accompany him.

#### ARTICLE 33

The commander to whom a parlementaire is sent is not in all cases obliged to receive him.

He may take all necessary steps in order to prevent the parlementaire taking advantage of his mission to obtain information.

In case of abuse, he has the right to detain the parlementaire temporarily.

#### ARTICLE 34

The parlementaire loses his rights of inviolability if it is proved in a clear and incontestable manner that he has taken advantage of his privileged position to provoke or commit an act of treason.

CHAPTER IV.—*Capitulations*

## ARTICLE 35

Capitulations agreed upon between the contracting parties must take into account the rules of military honor.

Once settled, they must be scrupulously observed by both parties.

CHAPTER V.—*Armistices*

## ARTICLE 36

An armistice suspends military operations by mutual agreement between the belligerent parties. If its duration is not defined, the belligerent parties may resume operations at any time, provided always that the enemy is warned within the time agreed upon, in accordance with the terms of the armistice.

## ARTICLE 37

An armistice may be general or local. The first suspends the military operations of the belligerent States everywhere; the second only between certain fractions of the belligerent armies and within a fixed radius.

## ARTICLE 38

An armistice must be notified officially and in good time to the competent authorities and to the troops. Hostilities are suspended immediately after the notification, or on the date fixed.

## ARTICLE 39

It rests with the contracting parties to settle, in the terms of the armistice, what communications may be held in the theatre of war with the populations and between them.

## ARTICLE 40

Any serious violation of the armistice by one of the parties gives the other party the right of denouncing it, and even, in cases of urgency, of recommencing hostilities immediately.

## ARTICLE 41

[26] A violation of the terms of the armistice by private persons acting on their own initiative only entitles the injured party to demand the punishment of the offenders and, if necessary, compensation for the losses sustained.

## SECTION III.—ON MILITARY AUTHORITY OVER THE TERRITORY OF THE HOSTILE STATE

## ARTICLE 42

Territory is considered occupied when it is actually placed under the authority of the hostile army.

The occupation extends only to the territory where such authority has been established and can be exercised.

## CONVENTIONS

## ARTICLE 43

The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

## ARTICLE 44

It is forbidden to force the population of occupied territory to take part in military operations against its own country.

## ARTICLE 45

It is forbidden to compel the population of occupied territory to swear allegiance to the hostile Power.

## ARTICLE 46

Family honor and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected.

Private property can not be confiscated.

## ARTICLE 47

Pillage is formally forbidden.

## ARTICLE 48

If, in the territory occupied, the occupant collects the taxes, dues, and tolls imposed for the benefit of the State, he shall do so, as far as is possible, in accordance with the rules of assessment and incidence in force, and shall in consequence be bound to defray the expenses of the administration of the occupied territory to the same extent as the legitimate Government was so bound.

## ARTICLE 49

If, in addition to the taxes mentioned in the above article, the occupant levies other money contributions in the occupied territory, this shall only be for the needs of the army or of the administration of the territory in question.

## ARTICLE 50

No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they can not be regarded as jointly and severally responsible.

## ARTICLE 51

No contribution shall be collected except under a written order, and on the responsibility of a commander in chief.

The collection of the said contribution shall only be effected as far as possible in accordance with the rules of assessment and incidence of the taxes in force.

For every contribution a receipt shall be given to the contributors.

## ARTICLE 52

Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in

proportion to the resources of the country, and of such a nature as not to [27] involve the population in the obligation of taking part in the operations of the war against their country.

Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied.

Contributions in kind shall, as far as possible, be paid for in cash; if not, a receipt shall be given.

#### ARTICLE 53

An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for the operations of the war.

Railway plant, land telegraphs, telephones, steamers and other ships, apart from cases governed by maritime law, as well as depots of arms and generally all kinds of munitions of war, even though belonging to companies or to private persons, are likewise material which may serve for military operations, but they must be restored and compensation fixed when peace is made.

#### ARTICLE 54

The plant of railways coming from neutral States, whether the property of those States or of companies or of private persons, shall be sent back to them as soon as possible.

#### ARTICLE 55

The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.

#### ARTICLE 56

The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property.

All seizure or destruction of, or wilful damage to, institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.

### SECTION IV.—ON THE INTERNMENT OF BELLIGERENTS AND THE CARE OF THE WOUNDED IN NEUTRAL COUNTRIES

#### ARTICLE 57

A neutral State which receives on its territory troops belonging to the belligerent armies shall intern them, as far as possible, at a distance from the theatre of war.

It may keep them in camps, and even confine them in fortresses or in places set apart for this purpose.

It shall decide whether officers can be left at liberty on giving their parole not to leave the neutral territory without permission.

## DECLARATIONS

## ARTICLE 58

In the absence of a special convention, the neutral State shall supply the interned with the food, clothing, and relief required by humanity.

At the conclusion of peace the expenses caused by the internment shall be made good.

## ARTICLE 59

A neutral State may authorize the passage over its territory of wounded or sick belonging to the belligerent armies, on condition that the trains bringing them shall carry neither personnel nor material of war. In such a case, the neutral State is bound to take whatever measures of safety and control are necessary for the purpose.

[28] Wounded or sick brought under these conditions into neutral territory by one of the belligerents, and belonging to the hostile party, must be guarded by the neutral State, so as to ensure their not taking part again in the operations of the war. The same duty shall devolve on the neutral State with regard to wounded or sick of the other army who may be committed to its care.

## ARTICLE 60

The Geneva Convention applies to sick and wounded interned in neutral territory.

## DECLARATION

The undersigned, plenipotentiaries of the Powers represented at the International Peace Conference at The Hague, duly authorized to that effect by their Governments,

Inspired by the sentiments which found expression in the Declaration of St. Petersburg of November 29/December 11, 1868,

Declare that:

The contracting Parties agree to abstain from the use of bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions.

The present Declaration is only binding on the contracting Powers in the case of a war between two or more of them.

It shall cease to be binding from the time when, in a war between the contracting Powers, one of the belligerents is joined by a non-contracting Power.

The present Declaration shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

A *procès-verbal* shall be drawn up on the receipt of each ratification, a copy of which, duly certified, shall be sent through the diplomatic channel to all the contracting Powers.

Non-signatory Powers may adhere to the present Declaration. For this purpose they must make their adhesion known to the contracting Powers by means of a written notification addressed to the Netherland Government, and by it communicated to all the other contracting Powers.

In the event of one of the high contracting Parties denouncing the present Declaration, such denunciation shall not take effect until a year after the notifi-

cation made in writing to the Netherland Government, and by it forthwith communicated to all the other contracting Powers.

This denunciation shall have effect only in regard to the notifying Power.

In faith of which the plenipotentiaries have signed the present Declaration, and have affixed their seals thereto.

Done at The Hague, July 29, 1899, in a single original, which shall remain deposited in the archives of the Netherland Government, and copies of which, duly certified, shall be sent through the diplomatic channel to the contracting Powers.

<i>For Germany:</i>	.....
<i>For Austria-Hungary:</i>	.....
<i>For Belgium:</i>	(Signed) A. BEERNAERT.
	(Signed) Cte. DE GRELLE ROGIER.
	(Signed) Chr. DESCAMPS.
<i>For China:</i>	.....
<i>For Denmark:</i>	(Signed) F. BILLE.
<i>For Spain:</i>	(Signed) El Duque DE TETUÁN.
	(Signed) W. R. DE VILLA URRUTIA.
	(Signed) ARTURO DE BAGUER.
[29] <i>For the United States of America:</i>	.....
<i>For the United Mexican States:</i>	(Signed) A. DE MIER.
	(Signed) J. ZENIL.
<i>For France:</i>	(Signed) LÉON BOURGEOIS.
	(Signed) G. BIHOUD.
	(Signed) D'ESTOURNELLES DE CONSTANT.
<i>For Great Britain and Ireland:</i>	.....
<i>For Greece:</i>	(Signed) N. DELYANNI.
<i>For Italy:</i>	.....
<i>For Japan:</i>	.....
<i>For Luxemburg:</i>	.....
<i>For Montenegro:</i>	(Signed) STAAL.
<i>For the Netherlands:</i>	(Signed) V. KARNEBEEK.
	(Signed) DEN BEER POORTUGAEL.
	(Signed) T. M. C. ASSER.
	(Signed) E. N. RAHUSEN.
<i>For Persia:</i>	(Signed) MIRZA RIZA KHAN, ARFA- UD-DOVLEH.
<i>For Portugal:</i>	.....
<i>For Roumania:</i>	(Signed) A. BELDIMAN.
	(Signed) J. N. PAPINIU.
<i>For Russia:</i>	(Signed) STAAL.
	(Signed) MARTENS.
	(Signed) A. BASILY.
<i>For Serbia:</i>	.....
<i>For Siam:</i>	(Signed) PHYA SURIYA NUVATR.
	(Signed) VISUDDHA.
<i>For Sweden and Norway:</i>	(Signed) BILDT.



## DECLARATIONS

*For Switzerland:**For Turkey:*

.....

(Signed) TURKHAN.

(Signed) M. NOURY.

(Signed) ABDULLAH.

(Signed) R. MEHEMED.

*For Bulgaria:*

(Signed) D. STANCIOFF.

(Signed) Major HESSAPTCHIEFF.

## DECLARATION

The undersigned, plenipotentiaries of the Powers represented at the International Peace Conference at The Hague, duly authorized to that effect by their Governments, inspired by the sentiments which found expression in the Declaration of St. Petersburg of November 29/December 11, 1868,

Declare that:

The contracting Powers agree, for a term of five years, to forbid the discharge of projectiles and explosives from balloons or by other new methods of similar nature.

The present Declaration is only binding on the contracting Powers in case of war between two or more of them.

It shall cease to be binding from the time when, in a war between the contracting Powers, one of the belligerents is joined by a non-contracting Power.

The present Declaration shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

A *procès-verbal* shall be drawn up on the receipt of each ratification, a copy of which, duly certified, shall be sent through the diplomatic channel to all the contracting Powers.

[30] Non-signatory Powers may adhere to the present Declaration. For this purpose they must make their adhesion known to the contracting Powers by means of a written notification addressed to the Netherland Government, and by it communicated to all the other contracting Powers.

In the event of one of the high contracting Parties denouncing the present Declaration, such denunciation shall not take effect until a year after the notification made in writing to the Netherland Government, and by it forthwith communicated to all the other contracting Powers.

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(Signed) Cte. DE GRELLÉ ROGIER.

(Signed) Chr. DESCAMPS.

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	(Signed) W. R. DE VILLA URRUTIA.
	(Signed) ARTURO DE BAGUER.
<i>For the United States of America:</i>	(Signed) ANDREW D. WHITE.
	(Signed) SETH LOW.
	(Signed) STANFORD NEWEL.
	(Signed) A. T. MAHAN.
	(Signed) WILLIAM CROZIER.
<i>For the United Mexican States:</i>	(Signed) A. DE MIER.
	(Signed) J. ZENIL.
<i>For France:</i>	(Signed) LÉON BOURGEOIS.
	(Signed) G. BIHOURD.
	(Signed) D'ESTOURNELLES DE CONSTANT.
<i>For Great Britain and Ireland:</i>	.....
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<i>For Italy:</i>	.....
<i>For Japan:</i>	.....
<i>For Luxemburg:</i>	.....
<i>For Montenegro:</i>	(Signed) STAAL.
<i>For the Netherlands:</i>	(Signed) v. KARNEBEEK.
	(Signed) DEN BEER POORTUGAEL.
	(Signed) T. M. C. ASSER.
	(Signed) E. N. RAHUSEN.
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<i>For Portugal:</i>	(Signed) Conde DE MACEDO.
	(Signed) AGOSTINHO D'ORNELLAS DE VASCONCELLOS.
	(Signed) Conde DE SELIR.
<i>For Roumania:</i>	(Signed) A. BELDIMAN.
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	(Signed) VISUDDHA.
<i>For Sweden and Norway:</i>	(Signed) BILDT.
<i>For Switzerland:</i>	.....
<i>For Turkey:</i>	(Signed) TURKHAN.
	(Signed) M. NOURY.
	(Signed) ABDULLAH.
	(Signed) R. MEHEMED.
<i>For Bulgaria:</i>	(Signed) D. STANCIOFF.
	(Signed) Major HESSAPTCHIEFF.

[31]

## DECLARATION

The undersigned, plenipotentiaries of the Powers represented at the International Peace Conference at The Hague, duly authorized to that effect by their Governments,

Inspired by the sentiments which found expression in the Declaration of St. Petersburg of November 29/December 11, 1868.

Declare that:

The contracting Powers agree to abstain from the use of projectiles the sole object of which is the diffusion of asphyxiating or deleterious gases.

The present Declaration is only binding on the contracting Powers in the case of a war between two or more of them.

It shall cease to be binding from the time when, in a war between the contracting Powers, one of the belligerents shall be joined by a non-contracting Power.

The present Declaration shall be ratified as soon as possible.

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*For Germany:*

*For Austria-Hungary:*

*For Belgium:*

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(Signed) A. BEERNAERT.

(Signed) Cte. DE GRELLÉ ROGIER.

(Signed) Chr. DESCAMPS.

*For China:*

*For Denmark:*

*For Spain:*

.....

(Signed) F. BILLE.

(Signed) El Duque DE TETUÁN.

(Signed) W. R. DE VILLA URRUTIA.

(Signed) ARTURO DE BAGUER.

*For the United States of America:*

.....

<i>For the United Mexican States:</i>	(Signed) A. DE MIER.
	(Signed) J. ZENIL.
<i>For France:</i>	(Signed) LÉON BOURGEOIS.
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	(Signed) M. NOURY.
	(Signed) R. MEHEMED.
	(Signed) ABDULLAH.
<i>For Bulgaria:</i>	(Signed) D. STANCIOFF.
	(Signed) Major HESSAPTCHIEFF.

# INTERNATIONAL PEACE CONFERENCE

TABLE OF SIGNATURES AFFIXED UP TO DECEMBER 31, 1899, TO THE CONVENTIONS AND DECLARATIONS OF JULY 29, 1899

[S=Signed]	I	II	III	IV (1)	IV (2)	IV (3)
	Convention for the pacific settlement of international disputes	Convention respecting the laws and customs of war on land	Convention for the adaptation to maritime warfare of the principles of the Geneva Convention of April 22, 1864	Declaration prohibiting the discharge of projectiles from balloons or by other new methods of similar nature	Declaration prohibiting the employment of projectiles containing asphyxiating or deleterious gases	Declaration prohibiting the employment of bullets which expand or flatten easily in the human body, etc.
Germany.....	S	S	S <sup>1</sup>	S	S	S
Austria-Hungary....	S	S	S	S	S	S
Belgium.....	S	S	S	S	S	S
China.....	S	..	S	S	S	S
Denmark.....	S	S	S	S	S	S
Spain.....	S	S	S	S	S	S
United States of America.....	S <sup>1</sup>	S	S <sup>1</sup>	S	..	..
United Mexican States.....	S	S	S	S	S	S
France.....	S	S	S	S	S	S
Great Britain.....	S	S	S <sup>1</sup>	..	..	..
Greece.....	S	S	S	S	S	S
Italy.....	S	S	S	S	S	S
Japan.....	S	S	S	S	S	S
Luxemburg.....	S	S	S	S	S	S
Montenegro.....	S	S	S	S	S	S
Netherlands.....	S	S	S	S	S	S
Persia.....	S	S	S	S	S	S
Portugal.....	S	S	S	S	S	..
Roumania.....	S <sup>1</sup>	S	S	S	S	S
Russia.....	S	S	S	S	S	S
Serbia.....	S <sup>1</sup>	S	S	S	S	S
Siam.....	S	S	S	S	S	S
United Kingdoms of Sweden and Norway.....	S	S	S	S	S	S
Switzerland.....	S	..	S	S	S	S
Turkey.....	S <sup>1</sup>	S	S <sup>1</sup>	S	S	S
Bulgaria.....	S	S	S	S	S	S

<sup>1</sup> Under reservation of Article 10.

<sup>2</sup> Under reservation of declaration made in plenary session of Conference, July 25, 1899. (Pt. i, *ante*, p. 99.)

<sup>3</sup> Under the reservations formulated in Articles 16, 17 and 18 of the present Convention (15, 16 and 18 of the draft presented by the committee of examination) and recorded in the minutes of the meeting of the Third Commission of July 20, 1899. (Pt. iv, *post*, pp. 650-2.)

<sup>4</sup> Under the reservations recorded in the minutes of the Third Commission of July 20, 1899. (Pt. iv, *post*, p. 650.)

<sup>5</sup> Under reservation of the declaration made in the plenary session of the Conference,

**PART II**  
**FIRST COMMISSION**



[1]

## FIRST MEETING

MAY 23, 1899

---

His Excellency Mr. **Beernaert** presiding.

The **President** thanks the Commission for the honor it has done him by choosing him as its presiding officer. It is in order, says he, to proceed at once to the organization of the work of the Commission and he proposes, in consequence, its subdivision into two subcommissions, one to be military, the other naval.

This proposal having been accepted, he invites the members of the Commission to indicate to what subcommission they desire to belong.

He announces that the First Commission will meet Friday mornings in plenary meetings in the large hall of the Conference; from there, after having examined, if necessary, the questions of a general nature, they will divide between the two subcommissions the examination of the technical questions.

Mr. **Bihourd** asks whether certain delegates may be enrolled in the two subcommissions.

Mr. **Raffalovich** puts the same question.

It is decided that there shall be "military" members, "naval" members, and delegates who, not having special knowledge, may belong to either commission.

The **President** announces that the manner of reporting and communicating the proceedings of the Commission will be settled in the next meeting.

Mr. **Rolin** remarks that the substance of certain articles of the program is within the competence either of the military subcommission or of the naval subcommission. There is not, therefore, according to him, need of making the proposed subdivision.

The **President** answers that the question of principle will be discussed in plenary session.

Mr. **Raffalovich**, on the invitation of the **PRESIDENT**, states what he understands to be the duties of the secretariat in the commissions. There would eventually be need of having recourse to the kindness of some supplementary secretaries.

The meeting adjourns.



## SECOND MEETING

MAY 26, 1899

---

His Excellency Mr. **Beernaert** presiding.

His Excellency Mr. **Beernaert** takes the chair and makes the following speech:

Among the tasks of high importance which lie before the Conference, our First Commission has perhaps the most sacred.

We have especially to study, to discuss, to realize the master ideal which has created this great international assembly: that of assuring to the peoples a durable peace and of seeing a barrier placed to the progressive and ruinous development of military armaments.

Such is the principal object of the message, henceforth famous, of August [2] 12/24, 1898; public opinion is not deceived in it and has already said it has been as by instinct that the Conference has been christened with its beautiful name of "Peace Conference" which it has itself since consecrated.

The august initiative of Emperor **NICHOLAS II** was not a new act on the part of Russia.

Since the beginning of the century, the sovereigns of that vast empire have always busied themselves with bringing about an advance in this matter of the ideas of humanity.

When the first time, in 1816, the Congress of Vienna proposed, as to-day, to regulate the disarmament of Europe by the conventional determination of the normal effective force of the troops of each Power on a peace footing, the Russian Government warmly espoused that proposal.

It was the object of the celebrated letter of **ALEXANDER I** to Lord **CASTLE-REAGH**.

In 1868, an international military commission met at St. Petersburg and decreed the absolute prohibition of the use of certain explosives. For the first time, there were seen proclaimed solemnly, in a public act, these ideas which to-day seem quite natural, that civilized States are in duty bound to diminish as much as possible the calamities of war and that in more than one case the needs of humanity should be supreme over all others.

In 1874, it was by reason of sentiments no less noble and elevated, that Emperor **ALEXANDER II** took the initiative of the Brussels Conference.

It was desired at that time also to suppress all needless cruelties and with that aim it was proposed to define the laws and customs of war.

But how much greater is the present initiative! I know that the difficulties to be surmounted are considerable, but whatever they be, the meeting of this Conference will remain in itself a stupendous fact.

In the history of the world, it will be the first time, I think, that representa-

tives of almost every civilized country are seen to meet peacefully, without a dispute to settle, without complaints to be redressed, without any thought of personal advantage, and this in the two-fold and liberal purpose of perpetuating harmony and softening the evils of war, or of regulating it for the day when it cannot be avoided.

And with Emperor NICHOLAS II himself, these are no new aspirations.

Some years ago he made a present of a bell to I know not what town of France, Châteaudun, I think, and on the bronze he had engraved these words: "May it never ring other than the hour of concord and of peace!"

May this beautiful device, gentlemen, inspire our labors.

We have to pursue together the realization of an ideal which for centuries has occupied the minds of thinkers and of statesmen, and whatever happens, I shall hold it the honor of my life that I have been called to make my contribution. Such is, I am sure, also the opinion of you all.

The PRESIDENT thinks it suitable first to settle the manner of reporting the proceedings and the publicity that will be given them.

He states the decisions taken in this respect by the Second Commission and proposes to adopt them.

The secretariat could take down the minutes and they would be read at the following meeting and each member could take note of them. Besides a succinct statement of the proceedings would be printed and distributed to the delegates who are members of the First Commission.

This proposal is accepted.

The President proposes next to settle the order of the deliberations and the part to be assigned to the plenary meetings and to the subcommissions.

The four propositions of the circular of December 30, 1898, which are within the jurisdiction of the First Commission raise several questions, some of principle, others of application.

There is first the main question: that of the possibility of an understanding on a conventional limitation of armed forces on land and on sea or of budgets relative thereto—whether the present figures be taken, whether it be agreed even to reduce them, or, lastly, whether there be fixed by contract some other limits not to be passed.

Another question of principle is found in propositions 2, 3, and 4: Should there be forbidden by conventions every new progress in the manufacture of engines of war by land or by sea, arms, powders, explosives? Even though invention may be able to proceed no further, should cannon, guns and explosives remain what they are to-day? And without doubt, although the circular does not say so, it is in the thought of the Russian Government that for the firearms of the present day there could not be substituted other engines of destruction due to some new idea and which for instance might borrow their force from electricity.

[3] Of these two discussions of principle, the first evidently ought to take place in a plenary meeting, and we shall have soon to decide where the second should take place. Then come more special questions whose moving principle is exclusively contained in the desire of restricting and softening the evils of war, according to the formula already consented to in 1868 at St. Petersburg. From this entirely humanitarian point of view, should the use of new explosives and more powerful powders be prohibited?

Should the use of those at present employed be restricted?

Should there be a prohibition of the discharge of either projectiles or explosives from balloons or by any other similar method? And, as to the navy, is there need of proscribing the rams of warships and torpedo boats, whether submarine or diving, as well as all engines of the same kind?

These last questions belong to the technical domain, and we shall all be agreed in referring them to our two subcommissions.

It will then remain to be decided, if the second question of principle, which I indicated just now, shall be discussed here or in each of our two subcommissions.

Finally, we have to settle the order of our deliberations. At first sight, it would seem quite natural to begin at the beginning, and discuss first that problem, fundamental and of high importance, which is submitted to our investigation.

But I believe it right to recommend a contrary procedure, and it is the inaugural address of our honorable president that has suggested the idea to me.

Limitation of armaments, which forms the frontispiece of the circular of the Russian Government, appeared in his address as a conclusion and as a kind of crown—a triumphal crown—of our mutual efforts.

Yesterday, too, an analogous procedure was followed by the Second Commission on the motion of Mr. MARTENS. In the examination of the project discussed at the Brussels Conference, the last chapters were taken up first, so as to reserve until the last those questions on which an agreement appeared more difficult of formation. It is by harmony that we should desire to arrive at harmony.

I think, gentlemen, that for us, too, this way would be perhaps the best and the surest; but it is for you to decide, and I confine myself to expressing on this subject my personal opinion.

If you agree with this, I shall first open a general discussion bearing on the whole of the business that has been assigned us; you will decide whether it is here that we shall enter upon the discussion of the second question of principle that I have pointed out, and we shall then decide on the questions to refer to the subcommissions.

These various proposals are consented to.

The general discussion is opened; but no one asks the floor.

The **President** then consults the assembly on the point whether it intends to discuss in full the question of principle relating to the reciprocal prohibition of the use of new military improvements.

Colonel **Gilinsky** thinks that this discussion should be left to the subcommission.

General **den Beer Poortugael** agrees with this opinion.

The **President** remarks that, if the assembly so decides, the question of principle is to be discussed in the naval subcommission as well as in the military subcommission.

The proposal of Mr. **GILINSKY** is put to vote and adopted by a very great majority.

The **President** remarks that, if the assembly so decides it, the question of principle is to be discussed in the naval subcommission as well as in the military subcommission.

They will have to consider four special questions:

Is there need :

1. Of decreeing by convention a prohibition on putting into use new firearms, new explosives, and more powerful powders than those adopted at present :

2. Of limiting in wars on land the use of explosives of a formidable power and in present existence?

3. Of prohibiting the discharge of projectiles or of any explosive from balloons or by similar methods?

4. Of proscribing the use in naval wars of torpedo boats, submarine or divers, or other engines of destruction of the same nature ; and the construction in the future of war vessels with rams?

The two first questions ought to be studied by the two subcommissions, the third is within the competence of the military subcommission, the fourth within that of the naval subcommission.

[4] The Commission agrees to these proposals.

The **President** invites the members kindly to indicate to what subcommission they would belong.

The meeting adjourns.

## THIRD MEETING

JUNE 22, 1899

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His Excellency Mr. **Beernaert** presiding.

The minutes of the meetings of May 23 and 26 are read and adopted.

Mr. **Raffalovich** moves the printing of the speech of his Excellency Mr. **BEERNAERT** in the meeting of May 26. (*Assent.*)

The **President** recalls that the first subject in the order of the day is the discussion of the reports presented in the name of the two subcommissions; these conclusions are unfortunately few in number. A decision is to be reached at first upon those of the report of General **DEN BEER POORTUGAEL**.

The first relates to bullets.

The **PRESIDENT** has read the different formulas which have been successively presented on this subject.

The subcommission has adopted the following text by nineteen votes against one and one abstention:

The use of bullets which expand or flatten easily in the human body, such as exploding bullets, bullets with hard jackets whose jacket does not entirely cover the core or has incisions in it, should be prohibited.

The discussion is opened.

General Sir **John Ardagh** reads the following declaration:

I ask permission to present to this high assembly some observations and explanations on a subject which has already been submitted to vote.

It is the question of bullets.

In the meeting of May 31, an article was accepted by a considerable majority against the use of bullets with a hard jacket whose jacket does not entirely cover the core or has incisions in it.

It seems to me that the use of these words describing technical details of construction will result in making the prohibition a little too general and absolute. It would not seem to admit of the exception which I would desire to provide for, that is, the present or future construction of some projectile with shock sufficient to stop the stricken soldier and put him immediately *hors de combat*, thus fulfilling the indispensable conditions of warfare without, on the other hand, causing useless suffering.

The completely jacketed bullet of our **LEE-METFORD** rifle is defective in this respect. It has been proven in one of our petty wars in India that a man perforated five times by these bullets was still able to walk a considerable distance to an English hospital to have his wounds dressed. It was proven just recently, after the Battle of Om-Durman, that the large majority of the Dervishes who

were able to save themselves by flight had been wounded by small English bullets, whereas the REMINGTON and MARTINI of the Egyptian army sufficed to disable. It was necessary to find some more efficient means, and to meet this necessity in India, the projectile known under the name of "dumdum" was made in the arsenal of that name near Calcutta.

In the dumdum bullet, the jacket leaves a small end of the core uncovered.

The result of this modification is to produce a certain extension or convexity of the point and to cause a shock more pronounced than that given by the completely jacketed bullet, but at the same time less effective than that given by the bullet of the ENFIELD, SNIDER, or MARTINI rifles whose caliber is [5] larger. The wounds made by this dumdum bullet suffice ordinarily to cause a shock which stops an advancing soldier and puts him *hors de combat*; but their result is by no means designed with the aim of inflicting useless suffering.

I wish to explain how it happened that the dumdum bullet acquired a bad reputation in Europe. It is on account of certain experiments that have been made with bullets having a shortened jacket which did not resemble the dumdum bullets at all, either in construction or in effect.

I speak of the experiments made at Tübingen by Professor BRUNS, of which a report was published in the *Beiträge zur Klinischen Chirurgie* at Tübingen in 1898.

The bullet of these experiments had a leaden point about one diameter longer than the hard jacket, and in consequence the flattening and expansion in penetrating the body were considerable and the wounds excessively severe—in fact, frightful. These experiments prove that a bullet of which the flattened, leaden point is entirely unprovided with a hard jacket works in a certain sense like an explosive bullet and produces a terrible effect, but the experiments at Tübingen cannot be accepted as evidence or proof against the dumdum bullet, which has an entirely different construction and effect. At the same time, it is a fact that the erroneous conception formed in Europe about the character of the latter is entirely due to the wholly false idea that these two projectiles are almost identical in construction.

Several interpellations were made in the English Parliament on the subject of the dumdum bullet, and on June 5 the Secretary of State for India, in response to a question about the dumdum bullet, said that the Government of Her Majesty saw no reason for making an inquiry regarding "the decisions of the Government of India on the subject of the dumdum bullet," and he added that he would present to the House of Commons the reports of the experiments made with that projectile.

It scarcely seems necessary for me to assert that public opinion in England would never sanction the use of a projectile which would cause useless suffering, and that every class of projectile of this nature is condemned in advance; but we claim the right and we recognize the duty of furnishing our soldiers with a projectile on whose result they may rely,—a projectile which will arrest, by its shock, the charge of an enemy and put him *hors de combat* immediately.

Heretofore this result was accomplished by spherical bullets of the old musket which had a diameter of 20 millimetres and of the MARTINI with 12 millimetres. No objection upon humanitarian grounds was ever made against the projectiles of those muskets. Our present musket, the LEE-METFORD has a

calibre of only 8 millimetres. The transverse section of this projectile, which is entirely covered by a jacket, is only about one-half of that of the MARTINI bullet and one-sixth of the spherical bullet.

It is therefore not surprising that they produce only a slight shock. In fact, it has been clearly proven that our completely jacketed bullet, such as is at present used in the English army, does not sufficiently protect our soldiers against the charge of a determined enemy; hence we desire to reserve entire liberty to introduce modifications in the construction of either the jacket or the core, for the purpose of causing the shock necessary for putting a man *hors de combat*, without occasioning useless aggravation of suffering.

Such is our point of view, and we can not, consequently, accept the wording of the prohibition voted by the majority on the first reading, which imposes a technical restraint on details of construction.

Nevertheless, I desire to repeat that we are completely in accord with the humanitarian principles proclaimed in the Convention of St. Petersburg, and that we shall endeavor to observe them, not only in their letter, but in their spirit also, in seeking a solution of the problem as to what kind of projectile we shall adopt. I can assure this honorable assembly that it is very disagreeable to me to find myself obliged to vote, for the reasons I have just explained, against a rule inspired by principles of which I wholly approve; and I still cherish the hope that it will be possible to arrive at a unanimous agreement, by means of a phraseology which shall leave aside technical details of construction and affirm the principles on which we are all agreed—the principles enunciated in the Convention of St. Petersburg, that is to say, the prohibition of the use of bullets whose effect is to aggravate uselessly the sufferings of men placed *hors de combat*, or to render their death inevitable.

The President observes that the wording voted for does not directly refer to the dumdum bullets, and rather approaches the wording adopted in 1868 at St. Petersburg and to which the British Government acceded.

[6] He asks whether the English delegate, who approves the idea on which the proposed wording was based, is able to present a modification of this wording which might obtain all the votes.

General Sir John Ardagh repeats that the objection of his Government relates to the term employed, namely, bullets with a hard casing which does not entirely cover the core or is provided with incisions. If these words were omitted he could give his sanction to the wording as voted for.

General den Beer Poortugael and Colonel Gilinsky remark that under these conditions the prohibition would no longer have any scope; they demand the maintenance of the text as it was adopted by several technical delegates.

General Sir John Ardagh declares that he is obliged to maintain his negative vote inasmuch as the wording amounts to a condemnation of the dumdum bullet.

Captain Crozier would like to have the details omitted concerning the construction of the bullet. He says that bullets might be invented which, without bursting, would assume the form of a bigger caliber, and it would be unjust to deprive the Powers of the advantages to be derived therefrom, if these bullets would not produce uselessly cruel wounds. He therefore favors the omission of the words indicated by Sir JOHN ARDAGH.

The President says he does not see what would remain of the article if

they were to accept the modification suggested by Sir JOHN ARDAGH and supported by Captain CROZIER.

Captain Crozier proposes the following wording:

The employment of bullets which inflict uselessly cruel wounds, such as explosive bullets and in general every kind of bullet which exceeds the limit necessary in order to put a man *hors de combat* at once, is forbidden.

General Zuccari says that these observations tend to revert to the text proposed by Mr. VON KHUEPACH, which would have the advantage of reserving the right of invention recognized by the subcommission. Being in favor of prohibiting uselessly cruel bullets, he will vote in the affirmative again, although he would have preferred a wording going into less detail.

Colonel Gilinsky, after referring to the difficulty of finding a new form of wording, says that bullets whose casing contains incisions cause too cruel wounds. It is rare that a bullet whose core is not covered assumes a pear shape. In most cases it takes the shape of a mushroom. The purpose of war is to put men out of action, and ordinary bullets are sufficient for this purpose.

General Sir John Ardagh regrets that Colonel GILINSKY cannot accept the modified wording. It is not proved that the dum dum bullet is uselessly cruel. The Tübingen bullet is the one that produces frightful wounds.

Colonel Gilinsky answers that the Tübingen bullet has never been used in war. The experience of two wars in which the dum dum bullet was used has proved that the wounds inflicted by this projectile are fearful.

General Sir John Ardagh refers to the answers given at seven different times in the English Parliament on this question.

Count de Macedo interposes the declaration that the difference of opinions among the technical delegates will prevent him from voting one way or the other.

Colonel Gross von Schwarzhoff says that the newspapers and even this assembly have spoken of a "Tübingen bullet," and he wishes to warn the assembly against forming any erroneous opinion on this subject. There is no firearm factory at Tübingen, but there is a celebrated university of which one of the most renowned professors, Surgeon BRUNS, has spent much time studying the effect of small caliber projectiles.

Colonel GROSS VON SCHWARZHOFF does not know what bullet Mr. BRUNS used in his experiment. At all events it was not the bullet of the German army. And never has there been any question of introducing therein a bullet whose core would not be completely covered by the casing.

General den Beer Poortugael, Colonel Gilinsky and the President remark that the wording proposed by Captain CROZIER is far too vague.

The President recalls the fact that the St. Petersburg Convention which was acceded to by England, is more precise, since it prohibits the use of any projectile under four hundred grams which is either explosive or loaded with fulminating or inflammable substances.

Mr. Raffalovich asks that precedence be given to the vote on the original text.

The latter is upheld by twenty votes to two (England and the United States), one country abstaining (Portugal).

The following voted in the affirmative: Germany, Austria-Hungary, Bel-



gium, Denmark, Spain, France, Greece, Italy, Japan, Montenegro, Netherlands, Persia, Roumania, Russia, Serbia, Siam, Sweden and Norway, Switzerland, Turkey and Bulgaria.

The **President** takes up the discussion of the question of throwing projectiles from balloons.

[7] He summarizes the passages of the report in regard to this subject.

Captain **Crozier** calls attention to the observations which he made in this connection at the last meeting of the first subcommission. Without wishing to repeat them, he desires to summarize their substance here. The present balloons cannot effectively serve in war. Moreover, their use for the purpose in question would neither be humane nor in accordance with the spirit which guides us, since it is impossible to foresee the place where the projectiles or other substances discharged from a balloon will fall and since they may just as easily hit inoffensive inhabitants as combatants, or destroy a church as easily as a battery. However, if it were possible to perfect aerial navigation in such a way as to do away with these defects, the use of balloons might decrease the length of combat and consequently the evils of war as well as the expenses entailed thereby. But there is another point to be considered: It would be important to secure unanimity of votes on this question; now, three Powers have endorsed the proposition only on condition of limiting the prohibition to five years.

By accepting this limit he believes that it will be possible to obtain the desired unanimity; he therefore embraces the opinion of the delegates from Great Britain, France and Roumania.

General **Mounier** is also of opinion that it would be dangerous to impose restrictions on oneself for an indefinite length of time. It is impossible to foresee what the future has in reserve. The observation of Captain **CROZIER** appears to him to deserve the most serious attention. To-day the projectiles discharged from a balloon may make victims among the non-combatants.

But the use of more perfect balloons may become a practical and lawful means of waging war. It would therefore be suitable to limit the prohibition to some definite period of time, for instance, five years or even more.

Colonel **Gilinsky** admits that they cannot pledge themselves forever and he proposes a ten year limit.

General Sir **John Ardagh** supports the proposition of Captain **CROZIER**.

The **President** submits the following draft to a vote.

The discharge of projectiles and explosives from balloons, kites, and in general by different means than those in use at present, shall be prohibited for five years from the date of ratification of the act of the Conference.

Lieutenant Colonel **von Khuepach**, after observing that the end (second line) of the draft is much too general, deems it superfluous to mention kites.

Colonel **Gilinsky** answers that experiments have been made for the purpose of utilizing kites as a means of warfare.

The **President** having observed that the wording just proposed is in reality a little vague, Colonel **Gilinsky** declares that he does not oppose its being modified.

General **den Beer Poortugael** proposes the formula "by means of aerial devices."

Colonel **Gilinsky** endorses this suggestion.

Colonel **Coanda** would like to know whether it would be necessary to include among aerial devices, for instance, the hurling by mortars of projectiles which would burst in the air and cause dynamite or other explosives to fall.

The **President** answers that the apprehension of Mr. **Coanda** does not seem justified, since the projectiles thrown by a mortar start from the ground.

Mr. **Beldiman** having expressed a doubt as to the clearness of the term "aerial," Mr. **Raffalovich** answers that the expression "aerial device" refers exclusively to the point of departure of the projectile, and he reads the passage in which Colonel **Gross von Schwarzhoff** had formally reserved the employment of mortars.

Mr. **Bihourd** considers that the term "aerial" is too liable to give rise to ambiguity, and it would therefore be preferable to substitute in place thereof the word "similar."

Colonel **Gross von Schwarzhoff** observes that as they are returning to the old wording they should not omit the word "new."

The following form of wording is put to a vote and unanimously adopted:

The discharge of projectiles and explosives from balloons or by other new methods of a similar nature shall be prohibited for five years from the date of ratification of the act of the Hague Conference.

### *Guns*

The **President** summarizes the conclusions of the report.

He opens up the discussion on the proposition of General **Den Beer Poortu- [8] Gaël**, the result of the vote on which in the subcommission was as follows: 9 yeas, 3 nays and 9 abstentions. These abstentions having been caused chiefly by lack of instructions from the respective Governments, it may be that the latter have since been transmitted to the delegates and that the discussion may reach a definite result.

Jonkheer **van Karnebeek** says that the question is similar to another one dealt with in the second subcommission, namely, that of cannon. These two questions are difficult to settle at present; they would necessitate a thorough examination on the part of the technicians of the different countries, and this would require considerable time. It is to be feared that time would be lacking for such an examination, and that a negative conclusion would be reached, whereas later on an understanding might be secured. And just as he took the liberty of proposing that the question of cannon be reserved for a subsequent examination, he would also like to see the same thing done in regard to guns.

It ought therefore to be stated that the question remains open and that it remains under consideration as regards the various Governments. Otherwise the risk would be run of meeting a check caused not by ill-will, but by the difficulty of passing on the subject within so short a period. In this case, the public, which has not been able to follow the discussion, would look at the result from a less favorable standpoint than it really warrants.

He proposes, in conclusion, to reserve the decision to be reached until some conference to be held subsequently.

The **President** remarks that the proposition of Mr. VAN KARNEBEEK is only subsidiary, in case that of General DEN BEER POORTUGAEL should not be adopted.

The **Bulgarian Delegation** declares that the instructions which it has received from its Government enable it to accede to the motion of General DEN BEER POORTUGAEL.

The **Delegates** from **France, Austria-Hungary, Turkey, and Japan** have received contrary instructions; they would therefore have to vote in the negative.

The **Delegate** from **Great Britain** withdraws his original accession and would also vote in the negative.

Captain **Crozier** had abstained because the United States are not in sympathy with the spirit of the proposition and do not like to see any hindrance placed in the way of inventive genius which might result in affording savings in war budgets. In view of this consideration he will vote in the negative.

The **President** states that he has before him two motions. Parliamentary usages demand that he first put to a vote the motion to postpone the matter.

Jonkheer **van Karnebeek** insists on the opportuneness of his proposition; it seems to him that the respective Governments have not had time to examine the question in a sufficiently thorough manner.

The proposition of Mr. VAN KARNEBEEK to refer the decision on this question to a subsequent conference is unanimously adopted.

The **President** asks whether any delegate wishes to reverse the negative decisions adopted in the first subcommission. He thinks that there is no reason for doing this. (*Assent.*)

The **PRESIDENT** himself asked the subcommission whether it did not intend to deliberate on the subject of a conventional prohibition, for a fixed period of time, of the utilization of the new means of destruction whose force is borrowed from new elements such as electricity or chemistry. The subcommission referred this point to the Commission assembled in full session. The time has come to take up the matter.

Colonel **Gilinsky** embraces the opinion of the **PRESIDENT** in this regard, Russia being of opinion that existing means of waging war are sufficient.

Colonel **Gross von Schwarzhoff** also considers the present devices of war to be sufficient. However, we cannot bind our hands in advance, for we do not know what more humane means may be invented in the future.

Colonel **Gilinsky** thinks that it might be possible to accept the prohibition to utilize the means of destruction in question for a certain length of time.

Captain **Crozier** seconds the opinion of Mr. **GROSS VON SCHWARZHOFF**.

The **President** asks the assembly whether it wishes to have this question remain open likewise and to have it referred to a subsequent examination. (*Assent.*)

The Commission now takes up the discussion of the conclusions contained in the report of Captain **SOLTYK**.

Jonkheer **van Karnebeek**, chairman of the second subcommission, summarizes the results obtained in the latter in regard to naval cannon. The question whether the proposition of Mr. **SCHEINE** ought to be adopted or not was left open there because it was agreed that the Governments should have plenty of time to examine it thoroughly. It would probably be necessary to assemble a technical committee in each country to make some practical tests.

[9] A premature decision of this question would be regrettable; he therefore

proposes to leave it open, the same as that in regard to guns, and to commend it to the serious study of the Governments. In this manner it will be possible to avoid the responsibility of a negative resolution, due solely to a lack of time.

Mr. **Beldiman** declares that in accordance with instructions which he has received from his Government, he is able to adhere to the motion of the Russian delegate.

The **President** gives precedence to the motion to postpone the matter as made by Mr. **VAN KARNEBEEK**.

It is adopted unanimously.

On motion of Captain **Scheine**, the Commission expresses a wish that the Governments may make an earnest examination of this question.

The **President** says that an almost unanimous result was obtained in regard to the prohibition to employ projectiles whose sole purpose is to spread asphyxiating or deleterious gases, and he opens up the discussion on this subject.

Captain **Mahan** having been the only one to express himself in the negative, wishes to explain the ground on which he based his action. Although he has received no instruction as yet on this subject, he will maintain his negative vote. The question of asphyxiating gases is still intangible, since projectiles of this kind do not really exist. Besides, he thinks that from a humane standpoint it is no more cruel to asphyxiate one's enemies by means of deleterious gases than with water, that is to say, by drowning them, as happens when a vessel is sunk by the torpedo of a torpedo-boat.

For these two reasons it is impossible for him to change his vote.

Jonkheer **van Karnebeek** believes that Captain **MAHAN** regards the matter too exclusively from the standpoint of naval war. Now, the question ought to be considered likewise from a standpoint of land war; and in the case of the latter the comparison between the two modes of asphyxiation is not appropriate.

It has been very justly remarked to the second subcommission, that the use of the projectiles in question would endanger the existence of a large number of non-combatants, for instance, in case of a siege.

However, another consideration comes up. The proposition of his Excellency Mr. **BEERNAERT** to prohibit the use of new methods of destruction had incurred the criticism of being too vague. Now, it is a question here of an expressly defined method. Although it is not yet invented, a fairly clear idea may already be formed of it; it is therefore easy to pass on the subject. He consequently proposes to adopt the almost unanimous decision of the subcommission.

Captain **Scheine** wishes to answer the second observation made by Mr. **MAHAN**. He is of opinion that no comparison can be made between the effect produced by torpedoes and that of asphyxiating gases. The latter may as a matter of fact be compared rather to the poisoning of a river, which Mr. **MAHAN** did not wish to allow.

Many persons may be saved even if they have been wounded or placed out of action, in case a vessel is sunk by a torpedo. Asphyxiating gases, on the contrary, would exterminate the whole crew.

This procedure would therefore be contrary to the humane idea which ought to guide us, namely, that of finding means of putting enemies out of action without putting them out of the world.

Captain **Mahan** insists on his view.

Count **de Macedo** thinks that in case of a shock by a torpedo there would

always be means of saving a large number of persons; therefore the comparison made by Captain MAHAN between the baneful effect of torpedoes and of asphyxiating gases does not appear to him admissible.

Captain Mahan answers that it would not be possible to save many persons, in view of the small dimensions of the torpedo-boat.

Mr. Bille thinks that there is not even any occasion to discuss the utilization of a projectile which does not exist, when the delegates of Powers such as Russia and Germany have stated that the present means of warfare are more than sufficient.

The prohibition suggested by the subcommission is put to a vote and unanimously accepted, with the exception of one vote (United States).

The delegates from Germany, Austria-Hungary, Great Britain, Italy, Japan and Portugal remarked that they accepted the prohibition only on condition that it be adopted unanimously; it appears, for that matter, both from the votes given by the subcommission and from the report of Count SOLTYK, that this condition has been expressly stipulated.

The meeting adjourns.

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[10]            **Annex I to the Minutes of the Meeting of June 22**

**REPORT PRESENTED IN THE NAME OF THE FIRST SUBCOMMISSION BY GENERAL DEN BEER POORTUGAEL**

GENTLEMEN: Having had the honor of being named reporter of the military subcommission of the First Commission, I will endeavor to be worthy of the mission with which the confidence of my colleagues has invested me; to state as briefly and faithfully as possible the result of our deliberations, of the votes and propositions that the subcommission has to submit to you.

The subcommission, inspired by the magnanimous ideas emanating from the generous initiative of the Emperor of Russia, has examined with great care and conscientious attention, the points of the Russian circular of December 30, 1898, which have been referred to its examination.

*Powders*

In the general discussion, Captain CROZIER (United States) declared that the prohibition of the use of more powerful explosives than those actually adopted would defeat one of the principal ends of the Russian proposition, namely, economy.

A powder being powerful in proportion to the production of gas furnished by the charge and the temperature of combustion, one might easily produce a powder, which, furnishing a greater volume of gas at a lower temperature of combustion, would be more powerful than any powder actually in use, and which at the same time, on account of the low temperature, would wear the gun less, permitting thus its longer use.

The delegates pronounced unanimously in favor of the absolute liberty of each country in all which concerns the use of new loading powders.

### *Explosives in the field*

Concerning the use of explosives in the field artillery, Colonel GILINSKY, in the name of the Russian Government, proposed that mining or fougade shells should not be used in this artillery and that they should limit themselves to the existing explosives, with prohibition of the formidable explosives, which are employed for sieges.

On the demand of Colonel GROSS VON SCHWARZHOFF (Germany) concerning the true meaning of the proposition, the PRESIDENT said that the import was that nations should forbid the use in the field of the very powerful explosives already adopted in some armies.

The question of the prohibition in the field artillery of mining or fougade shells being put to vote; ten countries voted yea (Belgium, Denmark, Netherlands, Persia, Portugal, Serbia, Russia, Siam, Switzerland, Bulgaria), eleven voted nay.

Upon the question whether the use of new explosives not yet utilized could be prohibited, twelve countries voted nay (Germany, United States, Austria-Hungary, Denmark, Spain, France, Great Britain, Italy, Japan, Roumania, Sweden and Norway, Turkey), the others, nine, yea.

### *Cannons*

Colonel GILINSKY (Russia) proposed that in the interest of economy, nations should agree not to change the cannon at present in use in the field artillery. At the same time, countries in arrears should have the opportunity to place themselves on an equality with the others.

Following an observation of General ZUCCARI (Italy) the PRESIDENT demanded if they were agreed that permission should be given at all events to countries in arrears to perfect their armament in order to place it on a level with those now more advanced.

Mr. BIHOUD (France), having observed that this formula would defeat the purpose of economy aimed at, the PRESIDENT called for a vote upon the question whether in case new improvements were prohibited, this proposition should, nevertheless, permit to all the adoption of the most improved types now in use.

The votes showed the great difficulties of an agreement; as Colonel GILINSKY observed, many States, neighbors to each other, are not in possession of satisfactory types, as is the case of guns.

[11] Five countries only (United States, Belgium, Italy, Serbia and Siam) voted yea; the delegates from Germany, Austria-Hungary, Netherlands, and Switzerland abstained on account of certain obtruding restrictions. The delegate from Denmark said that his country must change its stock, that it would be necessary to try the types in order to take the best, but that the countries which possessed them would not show them; therefore it would be necessary to state exactly what is admissible and what is not.

The delegates from Spain, France, Japan, Portugal and Roumania expressed themselves to the same effect. The delegate from Russia declared that the

Russian proposition meant to permit the adoption of the best cannon in use, that is to say, rapid firing cannon. The delegates from Persia and Bulgaria embraced the proposition of Russia. The delegate from Great Britain said that his Government was not disposed to accept any limitation. The delegates of Sweden and Norway and of Turkey made reservations.

In consequence of this vote the PRESIDENT thought he should establish the question of principle. Is there any reason for the nations represented in the Conference to forbid themselves, for a fixed period and notably for reasons of economy, to modify their armament cannons by excluding the use of every new invention?

All the delegates replied no, except Russia and Bulgaria, who abstained. The PRESIDENT, declaring that a very great majority is hostile to any limitation concerning cannons, considers that there is no more reason for discussion on this point.

### *Bullets*

At the first sitting of the subcommission Colonel KÜNZLI (Swiss) proposed the prohibition of certain projectiles, which aggravate wounds and increase the sufferings of the wounded. He said he had in view the bullets called dumdum.

The Netherland delegate, DEN BEER POORTUGAEL, has adhered to this proposition, his Government having charged him to demand the formal interdiction of the use of the dumdums and similar projectiles, which make incurable wounds. He said that the dumdum bullet whose point is very soft, whose projectile covering is very hard, and whose interior is formed of a softer substance, makes, by exploding at the slightest resistance, enormous ravages in the body, its entrance being very small, but its exit very large. It is sufficient to disable an armed man for the rest of the campaign, and such ravages are not necessary.

Sir JOHN ARDAGH (England) said that there must be a misunderstanding, seeing that dumdums are balls like any other ordinary projectiles.

The PRESIDENT observed that the proposition of the Netherland Government was only an extension of the principle sanctioned at St. Petersburg in 1868 and he demanded for the next sitting precise and clear texts.

Two formulas have been presented: that of Colonel KÜNZLI: "Prohibition of infantry projectiles such as have the point of the casing perforated or filed, and whose direct passage through the body is prevented by an empty interior or by the use of soft lead"; and that of the Russian Government: "The use of bullets, whose envelope does not entirely cover the core at the point, or is pierced with incisions, and, in general, the use of bullets which expand or flatten easily in the human body, ought to be prohibited, since they do not conform to the spirit of the Declaration of St. Petersburg in 1868."

Colonel VON KHUEPACH (Austria) is of the opinion that it would be necessary to confine themselves to prohibiting by agreement the use of bullets which would produce uselessly cruel wounds, without entering into details, and the more so, since it would not be possible to completely avoid mutilations.

Sir JOHN ARDAGH, in accord with the Austrian delegate, adds that there is a difference in war between civilized nations and that against savages. If, in the former, a soldier is wounded by a small projectile, he is taken away in the ambulance, but the savage, although run through two or three times, does not cease to advance.

For this reason the English delegate demands the liberty of employing projectiles of sufficient efficacy against savage races.

Mr. RAFFALOVICH explains that the ideas expressed by Sir JOHN ARDAGH are contrary to the humanitarian spirit which rules this end of the nineteenth century. He shows besides that the distinguishing between the enemies to wage war against and the projectiles to be used would necessarily induce complications of equipment.

[12] Colonel GILINSKY has called attention to the fact that the ball of the small caliber gun does not stop the attack of savages, not because they are savages; it does not even arrest any more the attack of a civilized army, for such is the effect of the small caliber. In fact the man seriously wounded can still advance during some time and even fight. That is, therefore, an argument, in favor of guns of large caliber. The Russian caliber of  $7\frac{1}{2}$  mm. (0.3 inches) stops the attack very well. By continually diminishing the caliber, too small a caliber is reached and with it the necessity of employing the dumdum bullets. As to the savages, they are unfortunately not secured against the use of explosive balls. In the Declaration of St. Petersburg of 1868, the contracting Powers have decided not to employ these balls in war among themselves. It is clear that there is a hiatus in the Declaration of 1868, a hiatus which permits the employment not only of the dumdum bullets, but even of explosive balls, against savage tribes.

The PRESIDENT believes that he expresses the opinion of the assembly in saying that there can be no distinction established between the projectiles permitted and the projectiles prohibited according to the enemies against which they fight even in case of savages.

As a result of the discussion, the Russian formula, which had received the adherence of the majority, was given the following wording agreed upon by the delegates of Russia, France, and Roumania.

The use of bullets which expand or flatten easily in the human body (making wounds uselessly cruel), such as explosive bullets, bullets with a hard envelope which does not entirely cover the core or is pierced with incisions, ought to be prohibited.

Nineteen countries declared themselves affirmatively (Germany, United States of America, Belgium, Denmark, Spain, France, Japan, Netherlands, Persia, Portugal, Italy, Roumania, Russia, Serbia, Siam, Sweden and Norway, Switzerland, Turkey and Bulgaria).

One country for the negative (Great Britain); one country (Austria-Hungary) abstained.

#### *Launching of projectiles from elevated balloons*

The proposition of the Russian Government prohibiting the hurling of projectiles from elevated balloons or by analogous means is discussed, and your reporter declares that his Government has authorized him to support it. In his opinion, to permit the use of such infernal machines, which seem to fall from the sky, exceeds the limit. When one is forced to make war, it should be carried on as energetically as possible, but it does not follow that all means are permitted.

He calls to mind Articles 12 and 13 of the final protocol of the Conference of Brussels of 1874 and closes by saying that with the progress of science



things which, yesterday even, appeared incredible, are realized to-day. The use of projectiles or other engines, filled with soporific, deleterious gas which if discharged from balloons in the midst of troops would at once disable them, may be foreseen. As it is impossible to guard against such proceedings, it resembles perfidy, and everything which resembles that ought to be scrupulously guarded against. Let us be chivalrous even in the manner of carrying on war.

Colonel VON SCHWARZHOFF (Germany) having called attention to the fact that it was not the intention to prohibit the use of mortars or other cannons with an elevated range, but that the words *similar methods* are applied only to new methods, not yet invented, the subcommission, in accord with this interpretation, adds to dissipate every misunderstanding the word "new" between the words "methods" and "similar."

Colonel GILINSKY adds besides, that, in the opinion of the Russian Government, the different ways of injuring the enemy used at present are quite sufficient.

The proposition is put to a vote, and all the delegates declare themselves for the prohibition, with the exception of those of Great Britain, France and Roumania, who desire to limit the agreement to five years.

### *Guns*

The question of guns has occupied the subcommission the longest time. It was discussed during four sittings.

Colonel GILINSKY (Russia) brought forward a proposition whose adoption would prevent new expenditures. The gun in use in the principal armies being nearly the same caliber and quality, the Russian Government proposes that the different countries should bind themselves by agreement, for a number of years to be determined, not to replace with others the guns now in service. It would only be a question of determining for a certain time the present type, excluding, for example, the automatic gun, which for the moment exists only in a [13] projected state and is not yet adopted anywhere. Improvements not modifying essentially the present gun and not changing it, would be permitted.

Captain AYRES D'ORNELLAS, delegate from Portugal, does not dispute the fact that the gun is nearly the same in the different armies, but observes that the caliber differs, varying between 6 and 8; he demands whether the stipulation proposed aims only at guns and cannons in use or if it is applied equally to uncompleted arms which are about to be adopted.

The PRESIDENT supposes that it would be understood that nations in arrears could put themselves on a level with the others.

He asks whether it would not be expedient to present a precise formula as to a minimum of caliber, and the delegate from the Netherlands proposes to accept any caliber from 6 to 8 mm.

After an exchange of views upon the technical details of the Russian proposition, the discussion ended on the 26th of May with declarations which made it apparent that there was a very great divergency of opinion among the delegates, the greater part of whom demanded clear and precise formulas.

The PRESIDENT expresses the hope that such formulas will be presented at the next meeting. It would be well to fix the minimum of caliber, the weight of the projectiles, the initial speed and the maximum of shots per minute, and to exclude automatic loading.

Count BARANTZEW, Russian delegate, having sent these *requests* by telegraph

to his Government, the members soon after received, in addition to the original proposition, two *propositions*, one from the Russian Government, the other from the delegate of the Netherlands.

The Russian proposition points out the modifications, improvements or changes that it would be permitted to make in the gun during a certain time to be fixed:

1. The minimum of the weight of the gun is fixed at 4 kilograms.
2. The minimum of the caliber at  $6\frac{1}{2}$  millimeters.
3. The weight of the ball shall not be less than  $10\frac{1}{2}$  grammes.
4. The initial speed shall not exceed 720 meters.
5. The rapidity of firing be limited to 25 shots per minute.
6. Explosive and dilatable balls, as well as automatic loading, are prohibited.

The formula presented by General DEN BEER POORTUGAEL was the following:

Countries agree to use in their armies and fleets, during five years, commencing from the moment when the present act shall be signed, only guns in use or being made at this time.

Concerning guns being made, only those will be tolerated of an existing model, varying only between 6 and 8 mm.

Improvements permitted must be of a nature to change neither the model, the caliber, nor the initial speed existing.

After a discussion upon balls, powders, and cannons, the question of guns was again broached in the sitting of May 31.

Colonel Count BARANTZEW has said that, although the subcommission found itself met by a second Russian formula, given in deference to an expressed desire, he hoped that they would revert to the text of the original proposition, which answered better to the intention of his Government (to stop expenses in establishing the gun). He fears that the data detailed in the second formula will only be a matter for controversy.

After an exchange of views among several delegates, the PRESIDENT put at first to a vote the text proposed by your reporter, a text accepted by the Russian delegate.

Colonel GROSS VON SCHWARZHOFF, has expressed the opinion that it did not seem probable that the proposition could be accepted because it permits improvements in the existing guns without giving a clear and precise definition of these. It would be very difficult to establish what improvements are permitted or prohibited. What authority would decide this question? In case of doubt it would be necessary, in order to fulfil loyally the conditions of the convention, to reveal the new model to the other Powers, to ask their consent before adopting it; as that is impossible, he regrets that he is forced to vote in the negative.

The delegates from the United States, Austria-Hungary, France, Great Britain, Italy, Japan, Portugal, Serbia, and Turkey express the same sentiment.

The delegates from Belgium, Denmark, Spain, Netherlands, Persia, Russia, [14] Siam, Sweden and Norway, Switzerland, and Bulgaria have voted yea, the last country with reservations.

The delegate from Roumania abstained from voting for want of instruction from his Government.

The vote is summed up as follows, nine yeas, one yea with reservation, ten nays, and one abstention.

The PRESIDENT put afterwards to vote the Russian text. Colonel GROSS VON SCHWARZHOFF has criticized, one by one, the different details of this formula, in conclusion of which, according to him, this proposition was unacceptable. He voted nay.

The delegate from Austria-Hungary, Lieutenant Colonel VON KHUEPACH, would be able to accept a conventional restriction, but only upon a principal question. If details are to be entered into, he thinks that it would be necessary that competent persons of all the countries represented should come to an agreement upon the possible limitations, before rendering them obligatory, as has been done for the revision of the convention of Geneva.

He has voted nay, as well as the delegates from the United States, Belgium, Denmark, Spain, Italy, Japan, Portugal, Roumania, Serbia, Siam, Switzerland and Turkey.

The delegates from the Netherlands, Persia, Russia, and Bulgaria have voted yea, this latter *ad referendum*. The delegate from France has declared that he was waiting for instructions.

There are then 13 nays, 1 yea, 1 yea with reservations, 2 abstentions.

A few days after the subcommission came together again to examine a new proposition presented by the Netherland delegate, viz.:

During a period of five years, commencing with the date of the present act, the countries agree not to replace the guns actually in use in their armies by guns of another model. But they do not prohibit the making of any improvement or any perfecting of the guns actually in use, which might seem advantageous to them.

The countries which have a gun of an out-of-date model, that is to say, of a caliber superior to 8 millimeters or without stock can adopt the existing models.

The delegate from the Netherlands explained in a speech which, upon the proposal of the PRESIDENT and of Mr. RAFFALOVICH, has been inserted in the *procès-verbal* and printed, the economical and political motives which have decided him to make this new proposition.

Colonel VON SCHWARZHOFF observes that the purpose of economy would not be attained because the improvements introduced in the guns of one country would oblige other Governments to adopt them in their turn, and that the latter, being obliged to expend more or less considerable sums for their guns, should, at least, preserve the liberty of choosing the gun which should seem best to them. Not knowing beforehand whether their gun actually in use would lend itself to the necessary transformations, they could not agree to preserve the model of it. The delay fixed at five years would probably double the expenditures first, for the improvements of the guns in use, afterwards for the making of a new gun.

The author of the proposition has replied that it was hardly probable that in the short space of five years there would be any necessity for notable improvements in the existing guns, and he adds that in any case there exists a considerable difference between the expenses to be made with a view of introducing an improvement in the existing gun, outlays usually inconsiderable, and those imposed by a complete change of armament, which requires 3 guns per man and amounts for an army of 500,000 infantry to 75,000,000,000 florins.

The delegates from Bulgaria, Messrs. STANCIOFF and HESSAPTCHIEFF, have

made the objection that if the proposition were adopted, States which have guns of 8 millimeters (0.31 inch) and which could not change them would be in a condition of inferiority as compared with countries at present in arrears and which would have the liberty of adopting a better model.

The author of the proposition has replied that the guns of 8 millimeters are very satisfactory, that several armies are provided with them and that Russia, from whom the proposition emanates, has a gun whose caliber differs very little from 8 mm.

Mr. MIYATOVITCH (Serbia) says that he accepts that proposed wording, while suggesting the addition that countries in arrears shall have the opportunity of improving their gun also.

He does not insist on this amendment in presence of the declaration of the PRESIDENT that the first paragraph of the resolution of the Netherland delegate guards this right also to states in arrears.

To the objection bearing upon the impossibility of the control to be exercised, raised incidentally by the English delegate and the Netherland delegate, Messrs. RAFFALOVICH and GILINSKY have replied that the most effective guaranty would be found in the good faith of the contracting Governments, as well as in the censure of opinion.

Colonel GROSS VON SCHWARZHOFF remarks that it is not a question of bad [15] faith; he has in view the disputes which may arise in good faith relative to the import of certain modifications.

On the vote, two countries only have voted nay (Germany, Italy).

Nine countries have voted yea (Denmark, Spain, Netherlands, Persia, Roumania, Russia, Serbia, Siam, Sweden and Norway).

Nine countries did not vote. The United States, Austria-Hungary, France, Japan, Turkey, Bulgaria (for want of instructions), Great Britain, Portugal and Switzerland.

From what precedes it follows, gentlemen, that your subcommission has only the proposition relative to the prohibition of bullets which expand or flatten easily when penetrating the human body, as well as that relative to the discharge of projectiles from balloons, to submit to you. The question of the gun remains open, six delegates, who refrained from voting, having done so for want of instructions from their respective Governments.

Gentlemen: In asking you to unite with me in expressing our indebtedness to our honorable president for the authoritative manner in which he has directed our debates, for the extreme clearness with which he has explained the most difficult technical points, I am only anticipating your desires; also I beg to express our thanks to our secretaries, who have been so impartial in drawing up the *procès-verbal* of our meetings, a considerable and difficult task.

June 11, 1899.

DEN BEER POORTUGAEL.

### Annex II to the Minutes of the Meeting of June 22

#### REPORT PRESENTED IN THE NAME OF THE SECOND SUBCOMMISSION BY COUNT SOLTYK

GENTLEMEN: While taking the liberty of submitting to you the report on the discussions which have taken place at the meetings of the second subcom-

mission of the First Commission, I beg of you at the same time to rest assured that I have been guided in this work only by a desire to respond to the mark of confidence with which you have kindly honored me.

The discussion on paragraphs 1, 2, 3, and 4 of the circular note of his Excellency Count MOURAVIEFF, dated St. Petersburg, December 30, 1898, has often given occasion here to the representatives of the navies of the civilized world to demonstrate their thorough knowledge in the vast and complicated domain of maritime technology.

The representative of the Imperial Russian Navy has several times had the kindness, on the invitation of the president, to undertake a new wording of the various paragraphs in order to afford his colleagues a point of departure for their discussions. As a matter of fact, during the course of the deliberations several doubts have arisen as to the exact scope and significance of the various questions propounded in said circular.

With a view to facilitating and abbreviating my report, I have taken the liberty, gentlemen, to classify the various questions which have been submitted to your consideration. In this manner it will be possible to secure a general summary of the debates entered in different places in the minutes.

I must further state that as soon as a closer examination was made of the ideas arising from the main points of the paragraph mentioned above, there almost always arose a diversity of opinions in the meeting of this subcommission, which diversity, in spite of the obvious good-will prevailing, made it impossible to reach conclusions which would obtain general approval.

As you will notice, gentlemen, even the first two principal terms of the second paragraph, that is to say, the word "prohibition" and the designation [16] "new firearm," raised many doubts among the delegates as to the scope of the definition.

Following an exchange of views it was agreed, on the proposition of one of the delegates (Mr. MAHAN) to accept tentatively this still very vague definition of "new firearm" as a general expression, in order that a decision might be reached relating to all kinds of firearms.

On the other hand, the simple word "position" gave rise to very well-warranted remarks in the subcommission in regard to the scope which ought to be assigned to it. Is it a question of prohibiting the construction of any warlike device, or is this prohibition to be understood as meaning that the importation of a new arm into an independent country is to be forbidden? In the former case it can only be a question of a measure of internal order respecting solely the Government of the country in which the inventor or manufacturer of the device resides. In the second case, the prohibition ought always to be considered as an assault on the sovereignty of a nation. Even a limited prohibition, as one of the delegates was pleased to remark, would remain without any useful consequence and could have no other positive result than the temporary suspension of a highly developed industry which now keeps considerable capital invested and thousands of persons employed.

With your permission, gentlemen, I should like to revert once more to the subject of a "new firearm," not wishing to pass over in silence many very just and remarkable observations made by several delegates.

One of the delegates (Mr. SCHEINE) having said that in his opinion the expression "new firearm" ought to be construed as meaning an "entirely new type," and as not comprising the transformations and improvements intro-

duced in the course of time, several delegates (Messrs. MAHAN and SAKAMOTO) asked whether the word "type" should indicate a weapon not yet invented. The very just observation was made (by Mr. PÉPHAU) that the definition "an entirely new type" simply lays down the question in different words. What should be meant by a new type? An old cannon modified and improved may also become a new type.

From a practical standpoint the expression "new type" raised the remark (by Sir JOHN FISHER), to which the subcommission agreed, that each country wishes to use the best weapon it can procure and that even a restriction in inventions and constructions of new types of warlike devices would place the civilized peoples in a disadvantageous position in time of war with less civilized nations or savage tribes.

The delegate from Russia, while declaring that the idea of a prohibition for an indefinite period never entered the mind of his Government, nevertheless thought that he must insist on his proposition to assume a pledge to limit the prohibition for a certain time, say three or four years; as it is not very probable that arms in general will be materially modified during this time, the means will at least be secured in this manner of securing a point of departure and the question of placing a limit on inventions and constructions would be more clearly determined and assume definite shape.

As it could not be hoped to promptly find a solution of this question, which constitutes the first part of the second paragraph, the PRESIDENT spoke of the necessity of considering whether this proposition to provide for a limitation for a certain period yet to be determined would not put an end to the ruinous competition between the nations.

What would be most effectual, if it could be done, would be to adopt penal provisions against the inventors of new destructive devices.

It will be frankly admitted that the observations of the president deserve every consideration by reason of the purpose which actuates them. However, taking into account the remarks made to the effect that it will never be possible to prevent inventors from ruining nations (Admiral PÉPHAU) and that moreover these inventions serve rather to hinder and retard war (Admiral FISHER), and finally that the establishment of a committee of control, as might be proposed, would, while constituting an attack on the sovereignty of a nation, render only very insignificant services (Messrs. PÉPHAU, FISHER, SIEGEL, and SOLTYK), the subcommission, after a thorough exchange of views, adopted the well-founded resolution that it should reserve its decision on this highly important question. On the proposition of the PRESIDENT, it invited the delegate of the Imperial Russian Navy (Mr. SCHEINE) to kindly endeavor to set forth once more the prevailing opinion of his Government on this first part of the second paragraph.

Upon this request, Mr. SCHEINE declared his willingness to endeavor to state his ideas more exactly.

For this purpose Mr. SCHEINE stated that the expression "new type" might be determined by means of the following proposition: he recalls the three [17] great transformations which cannon have undergone: The transition from the smooth bore to the rifled type, then the change from muzzle loaders to breech loaders, and finally the introduction of rapid fire guns.

In regard to naval ordnance, he says that it may be subdivided into three parts comprising,

1. Small rapid fire guns or those of a caliber below 120 mm. and revolving cannon;

2. The great bulk of guns, comprising rapid fire types from 120 to 200 mm. in diameter, and ordinary big guns up to 430 mm.;

3. Landing guns.

Mr. SCHEINE is furthermore of opinion that only cannon of modern type should be considered, leaving out of consideration the first group, which is without importance from the standpoint of relieving budgets, and the third as entering rather into the domain of land warfare.

Pursuing thus this analytical method, the second group may be further subdivided into two classes, namely:

a. Ordinary cannon of 17 to 43.17 cm. and

b. Rapid fire guns from 12 to 20 cm.

Besides this classification of systems of cannon, the delegate from the Russian Navy, in order to define his intentions the more effectively, asks the members of the subcommission to permit him to determine by means of figures the conditions under which the nations would be invited to pass on the main point of the proposition of the Imperial Government, that is, to unanimously accept a period of time to be fixed subsequently and during which the obligation will be assumed not to exceed the conditions agreed upon and enumerated below:

1. Limitation of the diameter of the caliber to 43 cm.;

2. Acceptance of a maximum cannon length of 45 calibers;

3. Fixing the initial velocity of existing powders at a maximum of 3000 feet or 914 meters;

4. Final determination of the thickness of armor plate at 35½ cm. taking as a model the last type of this kind from the Krupp firm.

In concluding his statement, Mr. SCHEINE further adds that this proposed measure would not redound to the detriment either of nations whose ordnance is now undergoing transformation, or of lower rate navies, which might during this period of time (3 to 5 years) come up to their complete armament. It will, of course, be the privilege of each Government to determine the beginning and end of this prohibitory period.

Most of the delegates of this subcommission, while manifesting keen interest in all these propositions, were nevertheless obliged to take them merely *ad referendum* in order to transmit them in due time to their Governments.

Following the observations made by the PRESIDENT, as also by several delegates (Messrs. SIEGEL, MAHAN, SOLTYK, BILLE, TADEMA and TURKHAN PASHA), concerning both the question of armor plate and that of fixing the various calibers at slightly increased figures, Admiral PÉPHAU thinks it would be proper to sanction the principle in general terms without entering into details; he makes the following proposition, which is accepted *in principle* by the delegates:

The contracting nations undertake during a period of ..... starting from ..... not to subject the existing types of cannon to a *radical* transformation similar to that of the muzzle loader which was replaced by the breech loader.

At all events the calibers in use should not be increased.

The delegates declare their readiness to submit the two parts of this proposition to the approval of their respective Governments. This motion on the part

of the French delegate called forth an exchange of views the result of which was that a majority of the delegates, while expressing doubts as to the competency of the subcommission to decide this question, did not believe that the Governments would be disposed to restrict inventions, notably as regards the improvement of armor plate (Mr. MAHAN).

The opinion prevails that the proposition of Mr. PÉPHAU is not acceptable unless it contains a restriction on armor plates.

It appears from the discussion of the motion presented by Mr. SCHEINE at the meeting of June 5 that most of the delegates are not entirely certain as to the exactness of the correlation between the various figures set forth and that in their opinion it would not be sufficient, in limiting the initial velocity, to maintain silence regarding the weight and length of projectiles, while at the same time setting a maximum of resistance for armor plate.

Inasmuch, therefore, as it will be unable to obtain a solution until a technical examination has been made in each country, the subcommission decides to [18] postpone the discussion until a later period, in order to await the decisions of the respective Governments, which the delegates have pledged themselves to ask for.

The delegates of the small navies, in accordance with the instructions from their Governments, point out that it will be necessary at all events to allow them to improve their armament in order to reach the level of the great maritime Powers, and that these small nations are the very ones which, being obliged to seek strength in the quality of their equipment, can not easily submit to restrictions in regard to new inventions. As regards wars with savage peoples (Sir JOHN FISHER), these restrictions will be solely to the detriment of civilized nations.

Finally, it is shown that in accordance with the instructions of the Governments, the first part of the PÉPHAU motion was considered unacceptable by Germany, the United States of America, Austria-Hungary, Great Britain, Italy and Turkey; but adopted by Denmark, Spain, Japan (under special conditions), the Netherlands, Portugal, Roumania, Russia and Siam.

The Government of Sweden and Norway abstained.

The president, Mr. VAN KARNEBEEK, defined the scope of the second part of the PÉPHAU proposition as follows: "that it relates to the calibers used at present by practically all navies," and he invited the delegates to inquire as soon as possible of their Governments whether they consider this second part acceptable.

It appears from the various opinions expressed in regard to this motion that the delegates from Austria-Hungary, Sweden and Norway, Japan, the Netherlands, and Siam accept it under reservation *ad referendum*, and on the express condition that this proposed limitation shall be unanimously adopted.

The delegates from United States of America and Italy consider that the pledge can not be accepted.

The delegate from Germany is also of opinion that this proposition implies a limitation of armor plates.

Passing on to the second part of the second paragraph, the delegate from the Imperial Russian Navy (Mr. SCHEINE), at the invitation of the president, sets forth the views of his Government on the proposition to forbid the use of new kinds of explosives which may be invented. It is a question, he says, (without speaking of initial velocities, of which it was a question before), of prohibiting the use of projectiles which spread asphyxiating and deleterious gases;



as the task of the Conference is to limit the means of destruction, it seems logical to prohibit the employment of devices such as those in question.

In his personal opinion, the use of these asphyxiating gases may be considered barbarous and equivalent to the poisoning of a river.

The PRESIDENT upon opening up the discussion on this chapter, characterized the poisoning of waters as an act of treachery and cowardice.

The delegate from Siam (Mr. ROLIN) remarks that this question of projectiles spreading asphyxiating and deleterious gases is to be submitted also to the deliberations of the first subcommission. It appears from the opinions expressed by the delegates that the representatives of the navies of France, Great Britain, Austria-Hungary, Japan, Sweden and Norway, the Netherlands, Denmark, Italy and Germany, are of opinion that their Governments—provided always that there be unanimity—would accept the proposition to prohibit the use of projectiles for the *sole purpose* of spreading asphyxiating gases.

The delegate from the United States of America (Mr. MAHAN) answers "No," adding that in his opinion the objection that a war-like device is barbarous has always been made against all new weapons, which were nevertheless eventually adopted.

In the Middle Ages firearms were criticized as being cruel, and later on mortars and still more recently torpedoes received the same accusation. In his opinion it does not seem demonstrated that projectiles containing asphyxiating gases would be an inhuman or cruel device without being decisive.

While he is the representative of a country which cherishes a keen desire to render warfare more humane, he also represents a nation which may be compelled to wage war, and it is therefore a question of not depriving oneself, by means of resolutions hastily reached, of means which later on might be usefully employed.

The result is, therefore, according to the votes taken, that 14 representatives admitted—provided always there be unanimity—the possibility of prohibiting this character of projectiles containing asphyxiating gases. The delegate from the United States answered in the negative, while the representative of Siam declared that he would take note of the proposition only *ad referendum*.

Passing on, finally, to the final paragraph of the circular note of December [19] 30, 1898, the principal points of which are the proposition to prohibit the employment of submarine or immersible torpedo boats and the invitation not to construct any war vessels with rams in future, it is my duty to state here that the observation made by the president to the effect that the use of submarine torpedo boats by a nation ought to be declared sufficient in order that all the other nations might make free use thereof, greatly facilitated the general discussion on this chapter.

After an exchange of personal opinions on the questions of submarine torpedo boats, which enabled several delegates (Messrs. SIEGEL, SOLTYK, BILLE, PÉPHAU, Sir JOHN FISHER, SAKAMOTO, TADEMA, HJULHAMMAR, and MEHEMED PASHA) to formulate very clear and precise ideas regarding the future of this weapon, it is shown that, according to the declarations made by the majority of the delegates, a prohibition of the boats in question must be considered as very unlikely, at least for the time being.

Taking up the following question, which relates to the use of rams on war vessels, the PRESIDENT wishes to state, first, that it is a question of a prohibition which would not extend to existing vessels, or to those under construction, and

that, moreover, by the designation "vessel with a ram," should not be understood a war vessel possessing a reinforced stem.

The representative of the Russian Government, Mr. SCHEINE, who was not instructed to formulate any propositions on the question put to a vote, intends to ask for instructions; he is nevertheless convinced that his Government, in placing this question on the program, rather had it in mind to ascertain the opinions of the different Governments.

It is shown from the opinions expressed by the delegates, Messrs. SIEGEL, MAHAN, SOLTYK, PÉPHAU, SIR JOHN FISHER, and SAKAMOTO, that the prohibition (even under reservation as regards unanimity) could not go into force until after the expiration of a certain period before which it would be necessary to allow the Governments the necessary time to finish the vessels already under construction.

It would, moreover, be very desirable to exclude likewise from this prohibition all vessels already projected in accordance with a determined plan of organization. With these restrictions the proposition to prohibit vessels with a ram secured the consent of the majority of the delegates on condition that the consent should be unanimous.

However, this unanimity was lacking because the delegates from Germany, Austria-Hungary, Denmark and Sweden and Norway were unable to join in it.

The delegate of the Imperial Russian Government having expressed his intention at one of the recent meetings to submit to the subcommission two new propositions, one looking toward the possibility of a compulsory admission of naval attachés on board the vessels of the belligerent, treating them on the same footing as military attachés already admitted in the general headquarters of land armies, and the other having rather a humane purpose in view, that is to say, the possibility of finding effective means for covering the rams of war vessels in time of peace in order thus to diminish the disastrous consequences of collisions, the said subcommission declared that it was incompetent to reach any decision in this regard. It based its unanimous opinion on the fact that, with respect to the first proposition, the settlement of such a question ought to be reserved solely for an agreement between the neutral nation and one of the belligerents and that with regard to the second it ought to be submitted to a special technical committee.

Thanking you, gentlemen, once more for the indulgence which you have kindly shown me, I propose to you to present, on behalf of the subcommission, our special thanks to the president for the impartial and competent manner in which he has directed our labors.

We also owe an expression of thanks to the members of the general secretariat for their devoted collaboration.

COUNT SOLTYK.

## FOURTH MEETING

JUNE 23, 1899

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His Excellency Mr. **Beernaert** presiding.

The minutes of the meeting of June 22 are read and approved without modification.

The **President** thanks the secretariat for the promptness with which it has reported the minutes in such complete form. (*Approval.*)

The **Delegate** of **Siam** asks that the declaration read by Sir JOHN ARDAGH [20] in the preceding meeting relative to dum dum bullets be printed.

General Sir **John Ardagh** says that he too attaches the greatest importance to having the public appreciate the force of the argument that he has advanced in favor of the harmlessness of the dum dum bullets.

The **President** states that there is no objection to printing the declaration made by the English delegate.

It will take place.

Mr. **Raffalovich** believes that in order to be impartial, it would be necessary to place the entire record before the eyes of the public. He asks therefore that not only the declaration of Sir JOHN ARDAGH, but also the opposite arguments, be printed.

Captain **Crozier** asks that the text of the proposition that he has formulated be inserted in the summary proceedings.

On the motion of Colonel **Gilinsky** it is decided that all that part of the minutes of the meeting of June 22 relative to bullets shall be printed in full.

General Sir **John Ardagh** says that after the decision which has just been taken there is no need for insisting on a correction of the summary proceedings, where perhaps too much space has been given to the observations presented by Colonel GROSS VON SCHWARZHOFF relative to the non-existence of a factory of arms at Tübingen; it is certainly not in the words of Sir JOHN ARDAGH that Colonel GROSS VON SCHWARZHOFF has been able to find any basis for the remarks he made.

Colonel **Gross von Schwarzhoff** answers that indeed he had at no time the idea of addressing Sir JOHN ARDAGH; but that, as German bullets were spoken of as German dum dums, both in this high assembly and in the papers, he believed that he was obliged to protest at the outset against a fiction about to be created.

The **President** says that the full reproduction of the minutes will give entire satisfaction to Sir JOHN ARDAGH and Mr. GROSS VON SCHWARZHOFF.

The **PRESIDENT** asks the assembly to pass to the discussion of the part of the report of Count **SOLTYK** relative to prohibition of submarine or diving torpedo boats and the construction in the future of war vessels with rams. There was no vote on these two questions in the subcommission, and it is for the Commission to decide them.

No one having asked the floor, the prohibition of submarine or diving torpedo-boats is put to vote.

Five States: Belgium, Greece, Persia, Siam and Bulgaria, vote for the prohibition with reservation; five States: Germany, Italy, Great Britain, Japan and Roumania, vote for prohibition under the reservation of unanimity; nine States: the United States of America, Austria-Hungary, Denmark, Spain, France, Portugal, Sweden and Norway, Netherlands and Turkey, vote in the negative.

Russia, Serbia and Switzerland abstain from voting.

The **President** puts to a vote the conventional prohibition against constructing war vessels with rams. He remarks that this prohibition does not contemplate ships with reinforced stems.

Four States: France, Greece, Siam and Bulgaria, adopted the prohibition.

Seven States: the United States of America, Great Britain, Italy, Japan, Persia, Netherlands and Roumania, adopted it under the reservation of unanimity.

Seven States rejected it: Germany, Austria-Hungary, Denmark, Spain, Portugal, Sweden and Norway, and Turkey.

Four States abstained from voting: Belgium, Russia, Serbia and Switzerland.

The **President** recalls that there was represented to the subcommission the suitability of seeking means to cover the rams of war vessels in time of peace in such a manner as to lessen the disastrous consequences of collisions but that the subcommission thought it was without jurisdiction, the question having to be abandoned to the domestic law of each State.

The **PRESIDENT** asks if it is wished to reopen this discussion in the full meeting; but nobody asks the floor.

The **PRESIDENT** conveys the thanks of the Commission to General DEN BEER POORTUGAEL and to Count SOLTYK who have so ably accomplished the delicate and complicated task that the subcommissions had entrusted to them.

The Commission passes to the examination of the first subject in the circular of Count MOURAVIEFF.

His Excellency Mr. **Beernaert** sets forth the importance of the discussion which is about to open, in these words:

We have now reached the serious problem which the Russian Government first raised in terms which immediately compelled the attention of the world.

Faithful to the traditions of his predecessors, and notably of **ALEXANDER I**, [21] who, in 1816, attempted to found eternal peace through disarmament, Czar

**NICHOLAS** asks a reduction of military expenses, or at least a limitation of their increase. He does this in terms the gravity of which can hardly be exaggerated.

For once it is a great sovereign who thinks that the enormous charges which, since 1871, have resulted from the state of armed peace now seen in Europe are of a nature to *undermine and paralyze public prosperity in their source, and that their ever-increasing progress upward will produce a crushing burden which the peoples will carry with greater and greater difficulty*. It is for this evil that he wishes Europe to find a remedy.

The circular of Count MOURAVIEFF defines the problem with greater precision in presenting it under this double aspect: what are the means of setting a limit to the progressive increase of armaments? Can the nations agree by common accord not to increase them or even to reduce them?

But it is for me rather to indicate the aim than to outline a solution, and I think that this latter should be formulated distinctly.

The subject is difficult, and it would be impossible to exaggerate its importance, for the question of armed peace is not only bound closely with that of public wealth and the highest form of progress, but also with that of social peace. This is one more reason why we should give clear and formal bases to our discussion. Thus, for example, should the engagement provide for the number of effective forces or for the amount of the budgets of military expenses, or at the same time for both?

How should the figures be fixed and verified?

Should the armies of to-day be taken as a point of departure? Should some last complement be admitted or should some other proportion be decided on? Should naval forces be dealt with the same as armies? What should be done with colonial defenses?

I hope that our eminent president, his Excellency Mr. STAAL, who will now address us, will enlighten us on these different points.

His Excellency Mr. Staal delivered the following address:

MR. PRESIDENT: I would like to add some words to the eloquent remarks which you have just made; I should like to state precisely the thought by which the Russian Government is inspired and to indicate at the same time the stages through which the question now before us has passed.

Since the month of August, 1898, the Russian Government has invited the Powers to seek, by the aid of international discussion, the most efficacious means of setting a limit to the progressive development of the present armaments.

A cordial and sympathetic welcome was given to the request of the Imperial Government by all the Powers that are represented here. At the same time, notwithstanding the enthusiasm with which this proposal was received, the Russian Government considered it necessary to obtain information from the Cabinets in order to decide whether the present time seemed favorable for the convocation of a conference of which the first object would properly be this restriction of armament.

The responses which are given us, the acceptance of the program sketched in the circular of December 30, 1898, and in which the first point looks to the non-augmentation for a fixed term of the existing armies, led us to take the initiative in the Peace Conference. It is thus, gentlemen, that we find ourselves assembled at The Hague, animated by a spirit of conciliation, and that our good-will is met by a common work to be accomplished.

Our two subcommissions have taken up points 2, 3, and 4 of the circular of December 30. These are, without doubt, technical and special difficulties, whose importance I am not in a position to appreciate, and which have prevented our reaching all the decisions desired. The Commission besides has expressed the wish to refer some of these questions to a later Conference.

Let us examine the essential point which has been referred to this Commission; it is the question of the limitation of budgets and of actual armaments. It seems to me indispensably necessary to insist that this important question should be made the subject of a most profound study, constituting, as it does, the first purpose for which we are here united, that of alleviating, as far as possible, the dreadful burden which weighs upon the peoples, and which hinders their material and even moral development. The forces of human activity are absorbed in an increasing proportion by the expenses of the military and naval budgets. As General DEN BEER POORTUGAEL has said so eloquently, it is the most important

functions of civilized Governments which are paralyzed by this state of affairs, and which are thus relegated to the second place.

Armed peace to-day causes more considerable expense than the most burdensome [22] some war of former times. If one of our great Commissions has been charged with the duty of alleviating or mitigating the horrors of war, it is to you, gentlemen, that the equally grand task has been assigned to alleviate the burdens of peace, especially those which result from incessant competition in the way of armaments.

I may be permitted to hope that on this point, at least, the desires of anxious populations who are following our labors with a constant interest shall not be balked. The disappointment would be cruel.

It is for this reason that I ask you to give all of your attention to the proposition which the technical delegates of Russia will present to you. You will see that these propositions constitute in very truth a *minimum*.

Is it necessary for me to declare that we are not speaking of Utopias or chimerical measures? We are not considering disarmament. What we are hoping for, is to attain a limitation—a halt in the ascending course of armaments and expenses. We propose this with the conviction that if such an agreement is established, progress in other directions will be made—slowly perhaps, but surely. Immobility is an impossibility in history, and if we shall only be able for some years to provide for a certain stability, everything points to the belief that a tendency toward a diminution of military charges will be able to grow and to develop. Such a movement would correspond entirely to the ideas which have inspired the Russian circulars.

But we have not yet attained to this point. For the moment we aspire to the attainment of stability for a fixed limitation of the number of effectives and of military budgets.

General **den Beer Poortugael**, delegate of the Netherlands, takes the floor and speaks as follows:

We now have before us the first subject of the circular of Count **MOURAVIEFF**, which has been reserved as the most difficult question but also the most important one to solve. It certainly deserves that all our faculties be concentrated in one supreme effort. It is necessary for us to take into account the great interests of the peoples affected, and I think I am not going too far in saying that the question should be entered upon by us with a certain deference.

For a quarter of a century—you know it, gentlemen, better than I—the effective land and sea forces and, consequently, the war budgets of all European nations have only increased from year to year. They have at present reached proportions that are gigantic, disquieting, and dangerous. Four million men under arms with the total yearly military budget of five billion francs! Is it not frightful?

I know well that these soldiers are kept under arms only to maintain peace; sovereigns have in view only the safety of the people they govern; States sincerely believe that all this outfit, these armed forces, are necessary for their preservation.

But they are mistaken. It is towards their inevitable loss, their own destruction slow but sure, that they are working when they continue in this way.

Please understand me. I am far from being a Utopian. I do not believe in an eternal peace, I even think that the wars can in exceptional cases be inevitable and salutary, by purifying, like a storm, the political atmosphere, and by freeing us from several meannesses that materialism and love of money foster.

It is impossible, then, to get along without armies and navies, but there is no need to exaggerate; there are limits to everything, and we have already passed them a long time ago.

If I have said that the States are hastening inevitably to their ruin it is because, the more their armed forces increase, military budgets swallow billions, peoples are crushed under the weight of taxes, the States are dragged more and more over the steep of the abyss into which they will finally perish; they are exhausting and ruining themselves.

This exhaustion may become so great that at the supreme moment, when the State must enter the lists to safeguard its honor or defend its independence, at that moment the sinews of war (money) will be wanting.

This ruin is beginning with the poorest States, the most indebted ones, it will end by attacking the others. There is no nation, however rich it may be, which, in the long run, can avoid it.

In truth, this incessant increase in armies, fleets, budgets, debts, seems to be found in the depths of the box of Pandora or to be the unlucky gift of the wicked fairy who desires the unhappiness of Europe. Europe seems to be the prey of an access of fever in which each wishes to surpass his neighbor; each one believes that he is obliged to follow, if another recommences.

From this precaution to guarantee peace, there will result war.

The augmentation of effective forces and of expenses will be the true cause [23] of war; pretexts abound.

How avoid this fatal destiny?

Many wishes have found expression; philosophers, savants, specialists have suggested their schemes. Everything thus far tried has been in vain.

But now is heard the voice of one of the great on earth, that of the powerful monarch of the Russian Empire. Perceiving all the miseries, understanding the mournful consequences that these continual increases must lead to, the august sovereign has made an appeal to the friendship and conscience of the nations; he has pointed out the remedy, that is to say, an agreement stipulating only non-augmentation, for a limited time, of the present effective forces and military budgets.

In limiting himself to the *status quo*, in not asking a reduction of forces, nor a final nor partial disarmament, the Emperor seems to have wished to disarm the opposition in advance.

I know all the difficulties that exist, but we military men know, too, that there is none that is insurmountable; we have always learned that to will is to be able.

To our Governments, bound together by the cords of our military organizations, like Alpine tourists, the Czar has said: "Let us make a united effort, let us halt on this edge of the abyss, if not, we shall perish!"

Let us halt! Gentlemen, it is for us to make this supreme effort; it is worth the labor:

Let us hold fast.

**General Gilinsky** takes the floor and says:

The program of the Russian Government has in view two objects:

The first is humanitarian; it is to put off the possibility even of war and to diminish as much as possible its evils and calamities.

The second is founded on economic considerations: to diminish as much as

possible the enormous weight of pecuniary charges which all nations find themselves obliged to bear for the up-keep of armies in time of peace.

With regard to the first task, the Commissions in charge of the questions of arbitration, good offices, the laws and customs of war on land, the adaptation to maritime warfare of the principles of the Geneva Convention, are now engaged in considering them.

I hope that their work will be crowned with success, but it is allowable to ask, gentlemen: Will the peoples represented in this Conference be entirely satisfied if, in going hence, we take them arbitration and laws of warfare, but nothing for times of peace, for this armed peace which is so heavy a burden on the nations, which crushes them to that point where it can be sometimes said that open war would perhaps be better than this state of secret war, this incessant competition in which all the world pushes forward larger and larger armies, larger now in time of peace than they used to be in time of greatest warfare?

The various countries have engaged in war only once in every twenty or thirty years.

But this armed peace lasts for decades, precedes war and follows it; it is that which threatens the ruin of nations by the enormous size of the armies in times of peace, the continual increase of effective forces and the frequent changes in armament.

It has been remarked to me, that although armies have considerably increased, populations have done so too, and therefore the rate of the expenditures bears on a greater number of contributors. But is it not true that armies are increasing out of proportion with the increase of population, that life has become dearer and that the support of the soldier and his armament is to-day much more onerous?

Indeed, this war budget at the present time swallows a great part of the receipts of a country and the support of troops in times of peace is becoming too heavy a burden. I have heard it said, too, that the money spent for making changes in armaments stays in the country. This is *perhaps* true for the countries that themselves manufacture their cannon and guns; for other nations this money goes out of the country.

But, even for countries so happily situated, is it a real advantage for the whole population, for all the contributors, even though in spending the money for manufacture of arms they may console themselves with the fact that the money stays in the country? So be it, if cash is paid. But suppose in order to manufacture the new arms a new loan is made even in the interior of the country? The artisan has received his money, the workman his wages, but the operation is not yet finished for the people, the debt remains, and everybody, peasants and artisans, workmen and property holders are obliged during long years to pay this debt until its liquidation, to pay the interest on it, the [24] total of which exceeds in thirty or forty years the amount of the original debt. No, gentlemen, when we look into this question frankly, we cannot deny that the development of armaments is the ruin of nations. And the nations understand it well. Accordingly, numerous proofs of sympathy for the Peace Conference and cordial wishes have been addressed by the peoples of different countries to the august initiator of this Conference.

Besides, the continual increase of the armed forces does not attain its end, for the ratio between the forces of different countries always remains the same. Some Government increases its troops that are supported in time of peace, or



forms new battalions; its neighbor follows immediately its example and reinforces its army to the extent necessary to preserve the ratio; the neighbor of the neighbor does likewise, and so on; the effective force is increased, but the ratios between the forces of the different nations always remain about the same.

In the territorial army, in reserve, it is still the same. Different means are employed; some diminish the number of years that the soldier is kept under the flag, others increase the number of years that the soldier stays in reserve; but it all tends to the same end and brings the same result: the ratio between the armed forces of the different States is unaltered.

Those are the considerations that have given my august sovereign and the Russian Government the idea of proposing an agreement, having in view to put a stop, if only for some time, to the rapid increase in armaments.

We suggest nothing new. Fixing effective forces and war budgets is practised in some countries and has been for a long time.

Thus, in Germany, the total of the troops in time of peace is fixed for from five to seven years. In Russia, the war budget is also fixed for five years. We are dealing then, with a known procedure, which has been practised for a long time, which frightens nobody and which gives good results; we may adopt them for a shorter time if you so desire, by way of trial. The only thing new here is the decision and the courage to say that it is time to stop. Russia proposes this to you; she invites you to set a limit to the further increase of military forces at a moment when she herself is far from having attained the maximum in this development, for we Russians do not call upon more than twenty-six to twenty-nine and one-half per cent of our young men to enter the ranks, whereas other States require as great a percentage or even more.

There is, thus, no selfish interest in the Russian proposal; it is an idea, a proposal of a purely humanitarian kind and with an economic feature which you can entertain and discuss in absolute confidence.

The program which is submitted to your discussion is the Russian program.

We cannot discuss another because no other program has been presented by the Governments which have accepted the invitation to the Conference. But within the limits of the Russian program every proposal of another country, facilitating an agreement, would certainly be welcome. The proposition which is submitted to you is not yet a formula upon which it only remains to vote.

The circular of January 12 says this clearly: it is one of the subjects "submitted to international discussion in the Conference." Therefore we have at first to discuss it, to hear proposals and ideas of other Governments in order to find later a formula to vote upon. We are not speaking here absolutely of diminishing the total of troops that at present exist, but merely of not increasing it, for a certain time, by way of trial.

There is no question of putting obstacles before Governments in the matter of organizing their troops or of preventing the creation of new units since one can organize while diminishing the effective forces of the existing units without increasing the total of the troops. I again repeat, that we are here dealing with not increasing the total number of the troops now existing, and this for a short time and by way of trial in order to find out if it would be possible later, in a subsequent conference, to make the same proposal for a long time.

As to the reduction of effective forces, I beg you, gentlemen, to forget completely this second subject during the discussion of the first, primarily, because it would be possible to discuss it only in case an agreement should be had on the

first subject: on the non-augmentation during a certain time of the total number of troops existing to-day.

And even in this case, the discussion of the second subject in this Conference would only be academical: "preliminary examination," as the circular says, "of the means by which a reduction might be effected in future." It would, then, only be an exchange of ideas which would serve as bases for the Government in studying these questions destined for discussion, perhaps, in a later Conference.

For the present Conference, gentlemen, we find ourselves confronted with [25] questions and proposals that are entirely realizable and with a decision that is becoming more and more urgent.

The idea of the Emperor of Russia is grand and generous. Misunderstood at first, it now commands the approval of all peoples; for the people have at last understood that this idea has in view nothing but peace and prosperity for all. The seed has fallen into fruitful soil: the human mind is aroused; it is working to make the seed germinate, and I am sure that it will soon bear beautiful fruit. If not this first Conference, then a later Conference will accept the idea, for it responds to a necessity, to the want of nations. We are the first, gentlemen, called to cultivate this idea, to solve the problem; let us not yield this honor to others, let us make a supreme effort; in devoting good-will and confidence to it, we shall, I hope, arrive at an understanding that is so ardently desired by all the nations.

The Commission decided that these four speeches should be printed in the summary proceedings.

The propositions offered by Colonel **Gilinsky**, delegate of Russia, respecting the means of putting a limit to the development of future armaments, are expressed as follows:

1. An international agreement for a term of five years, stipulating the non-increase of the present number of troops maintained in time of peace in each mother country.

2. The determination, in case of this agreement, if it is possible, of the number of troops to be maintained in time of peace by all the Powers, not including colonial troops.

3. The maintenance, for the same term of five years, of the size of the military budgets in force at the present time.

Colonel **Künzli** asks the assembly to refer to a future meeting the examination of the important propositions that Colonel **Gilinsky** has just formulated in the name of the Russian Government.

The first delegate of Persia, General **Mirza Riza Khan**, ARFA-UD-DOVLEH, pronounces the following discourse:

During the Conference so many and such eloquent addresses have been delivered that it would seem venturesome on my part to take the floor in a language that is not my own.

The Russian Government having done Persia the honor of inviting it to take part in the Peace Conference and to send a representative thereto, and His Imperial Majesty the Shah, my august sovereign, having deigned to choose me to undertake this honorable mission, the newspapers in Russia and in Sweden, especially those of St. Petersburg and Stockholm (to both of which countries I am accredited), have greeted my appointment with sympathetic articles and the more so because I belong so little to the world of letters. As to the journals of my own country they have expressed the warmest sentiments.

All these marks of interest impose upon me the duty of adding also on my side some words to the support of the great cause which is that of all humanity and with which we have here to deal. To all the praises of which the humanitarian aim of the circular of Count MOURAVIEFF has been the object, I can add nothing. But, on the other hand, critics have arisen; they have gone to the length of attributing motives of selfishness to the generous initiative of which the circular is the result.

Having the honor of personally knowing His Majesty Emperor NICHOLAS II, whose noble and kind sentiments I have been able to appreciate, I am happy to firmly declare here that all the proposals of the Russian Government emanate from the magnanimous heart of its sovereign. It is without flattery or reservation that I make this declaration. Permit me, gentlemen, to cite to you a proof of his noble and elevated sentiments.

In the first year after my appointment to the post of representative of Persia at the Russian Court, I was accompanying on my horse the Emperor who was going from the Winter Palace to the Field of Mars to be present at the review which took place on the eve of the departure of the Emperor for Moscow, where he was going to be crowned. As I was somewhat ill that day, I fainted and slipped from my horse.

The Emperor, seeing this, stopped his brilliant cortege and did not continue on his way until I had been put in a carriage. During the review he several times sent his aides-de-camp to learn of my condition.

Our celebrated poet Saadi has thus expressed himself in describing pride: "Its glance is like that of a king who causes his army to pass before him."

The young Emperor, an autocrat of 26 years of age, who, for the first time, after his accession to the throne, was passing in review a brilliant army of 30,000 men, did not, in that moment of legitimate pride, forget an accident [26] that had just happened to a stranger. Indeed, he who acts thus can not be selfish, and his acts, the initiative that he has taken for this Conference, can only proceed from a good and noble heart.

On the reception of the delegates of the Conference at the Hague Palace, you were able to see how much Her Majesty the Queen of the Netherlands was interested in our work and in the result that might be hoped from it.

Gentlemen, let us fulfil our duty before the civilized world, and not discourage Their Majesties the young Queen WILHELMINA and the young Emperor NICHOLAS II. With all my heart I wish that the high initiative of the Emperor and the good wishes of the Queen may be crowned with success for the welfare of our prosperity.

At the request of the president, the technical delegate of the Imperial Russian Navy, Captain **Scheine**, files with the office the text of his propositions relative to naval armaments. They are couched in these terms:

To accept the principle of determining, for a period of three years, the size of the naval budget with an agreement not to increase the total sum during this triennial period, and the obligation to publish in advance during the same period—

1. The total tonnage of war-ships, which it is proposed to construct, without defining the types of the ships themselves;
  2. The number of officers and men in the navy;
  3. The expenses of coast fortifications, including forts, docks, arsenals, etc.
- The meeting adjourns.

## FIFTH MEETING

JUNE 25, 1899

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His Excellency Mr. **Beernaert** presiding.

The minutes of the meeting of June 23 are read and approved.

The **President** asks Messrs. **GILINSKY** and **SCHEINE** whether they desire to develop further the proposals they formulated at the last meeting and of which the text has been printed and distributed among the members of the Commission.

Colonel **Gilinsky** takes the floor and says:

After the meeting of Friday, June 23, several questions have been addressed to me concerning the Russian proposals that I had the honor to submit for discussion by the First Commission, and I now ask permission to make some explanations.

It has been observed to me that the two first proposals speak of the same question: why, then, divide it into two parts? There is however a difference between these two proposals; that is to say, the second is a consequence of the first. The first deals with the question as a whole: the question of principle. Russia proposes to you to make an agreement stipulating for the non-increase of the present number of troops maintained in time of peace in each mother country. If we reach such an agreement, it is then that the second proposal comes up, the question of the number. If necessary each country will have to declare, in round or exact figures—still according to our decision,—the total number of its troops maintained in time of peace. It is to be defined whether the question means the number of soldiers only, without counting officers. Our proposal looks only to the total number of soldiers.

It will be necessary next to state the total number of recruits for each year which cannot be exceeded during the period of the understanding. Finally, it will be necessary to determine the number of years that the soldier is to remain under the flag, for you know well, gentlemen, that a change in this term has its influence upon the total of the territorial army.

That is what is dealt with in the *second paragraph of the Russian proposal*.

In the two proposals we deal with troops maintained in the mother countries; colonial troops are excluded: for since colonies often find themselves in danger or even in a state of war, it does not appear possible to prohibit the increase of colonial troops. Russia has no colonies properly so-called, that is, possessions absolutely separated by the sea. But we have territories, which, from the point of view of their defense, are in the same circumstances as colonies; for [27] they are separated from the mother country, if not by the sea, at least by enormous distances, and by the difficulty of communications; that is, Asia and the military district of the Amur. The two are extremely distant from

All these marks of interest impose upon me the duty of adding also on my side some words to the support of the great cause which is that of all humanity and with which we have here to deal. To all the praises of which the humanitarian aim of the circular of Count MOURAVIEFF has been the object, I can add nothing. But, on the other hand, critics have arisen; they have gone to the length of attributing motives of selfishness to the generous initiative of which the circular is the result.

Having the honor of personally knowing His Majesty Emperor NICHOLAS II, whose noble and kind sentiments I have been able to appreciate, I am happy to firmly declare here that all the proposals of the Russian Government emanate from the magnanimous heart of its sovereign. It is without flattery or reservation that I make this declaration. Permit me, gentlemen, to cite to you a proof of his noble and elevated sentiments.

In the first year after my appointment to the post of representative of Persia at the Russian Court, I was accompanying on my horse the Emperor who was going from the Winter Palace to the Field of Mars to be present at the review which took place on the eve of the departure of the Emperor for Moscow, where he was going to be crowned. As I was somewhat ill that day, I fainted and slipped from my horse.

The Emperor, seeing this, stopped his brilliant cortege and did not continue on his way until I had been put in a carriage. During the review he several times sent his aides-de-camp to learn of my condition.

Our celebrated poet Saadi has thus expressed himself in describing pride: "Its glance is like that of a king who causes his army to pass before him."

The young Emperor, an autocrat of 26 years of age, who, for the first time, after his accession to the throne, was passing in review a brilliant army of 30,000 men, did not, in that moment of legitimate pride, forget an accident [26] that had just happened to a stranger. Indeed, he who acts thus can not be selfish, and his acts, the initiative that he has taken for this Conference, can only proceed from a good and noble heart.

On the reception of the delegates of the Conference at the Hague Palace, you were able to see how much Her Majesty the Queen of the Netherlands was interested in our work and in the result that might be hoped from it.

Gentlemen, let us fulfil our duty before the civilized world, and not discourage Their Majesties the young Queen WILHELMINA and the young Emperor NICHOLAS II. With all my heart I wish that the high initiative of the Emperor and the good wishes of the Queen may be crowned with success for the welfare of our prosperity.

At the request of the president, the technical delegate of the Imperial Russian Navy, Captain **Scheine**, files with the office the text of his propositions relative to naval armaments. They are couched in these terms:

To accept the principle of determining, for a period of three years, the size of the naval budget with an agreement not to increase the total sum during this triennial period, and the obligation to publish in advance during the same period—

1. The total tonnage of war-ships, which it is proposed to construct, without defining the types of the ships themselves;
  2. The number of officers and men in the navy;
  3. The expenses of coast fortifications, including forts, docks, arsenals, etc.
- The meeting adjourns.

## FIFTH MEETING

JUNE 25, 1899

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His Excellency Mr. **Beernaert** presiding.

The minutes of the meeting of June 23 are read and approved.

The **President** asks Messrs. **GILINSKY** and **SCHEINE** whether they desire to develop further the proposals they formulated at the last meeting and of which the text has been printed and distributed among the members of the Commission.

Colonel **Gilinsky** takes the floor and says:

After the meeting of Friday, June 23, several questions have been addressed to me concerning the Russian proposals that I had the honor to submit for discussion by the First Commission, and I now ask permission to make some explanations.

It has been observed to me that the two first proposals speak of the same question: why, then, divide it into two parts? There is however a difference between these two proposals; that is to say, the second is a consequence of the first. The first deals with the question as a whole: the question of principle. Russia proposes to you to make an agreement stipulating for the non-increase of the present number of troops maintained in time of peace in each mother country. If we reach such an agreement, it is then that the second proposal comes up, the question of the number. If necessary each country will have to declare, in round or exact figures—still according to our decision,—the total number of its troops maintained in time of peace. It is to be defined whether the question means the number of soldiers only, without counting officers. Our proposal looks only to the total number of soldiers.

It will be necessary next to state the total number of recruits for each year which cannot be exceeded during the period of the understanding. Finally, it will be necessary to determine the number of years that the soldier is to remain under the flag, for you know well, gentlemen, that a change in this term has its influence upon the total of the territorial army.

That is what is dealt with in the *second paragraph of the Russian proposal*.

In the two proposals we deal with troops maintained in the mother countries; colonial troops are excluded: for since colonies often find themselves in danger or even in a state of war, it does not appear possible to prohibit the increase of colonial troops. Russia has no colonies properly so-called, that is, possessions absolutely separated by the sea. But we have territories, which, from the point of view of their defense, are in the same circumstances as colonies; for [27] they are separated from the mother country, if not by the sea, at least by enormous distances, and by the difficulty of communications; that is, Asia and the military district of the Amur. The two are extremely distant from

the center of the Empire; in the two the troops are not numerous and they find themselves opposed by very considerable armies which are nearer our troops than the reinforcements that we can send from Russia. There is, therefore, no means of placing these distant territories in the same conditions as the center of the country and of forbidding the possibility of increasing these troops in case of necessity; consequently, these territories must be considered as colonies.

The third point has regard to the ordinary budget, that is to say, the necessary budget for the maintenance of the existing troops; the manufacture of arms and constructions that do not go beyond what is ordinary. But when there is a complete change of cannons or of guns as well as the reconstruction of strongholds required by the effect of the new siege cannon, the manufacture of the new weapon requires enormous sums which cannot be found within the limits of the ordinary budget. These sums are asked by the Governments of all countries in addition to the ordinary budget; this is the extraordinary budget that can neither be provided for nor fixed. The high assembly having sanctioned the changing of armaments, has sanctioned in advance also the extraordinary budget.

The **President** asks whether other members have any proposition to develop respecting the first subject of Count MOURAVIEFF's circular.

No one asking the floor, he opens the discussion on the Russian proposals and asks whether all the delegates have received from their respective Governments instructions permitting them to declare themselves.

The **Delegates of Siam**, of **Denmark** and of **Serbia** say that the instructions that they have requested have not yet arrived.

Colonel **Uehara**, delegate from Japan, says that he has not yet addressed to his Government a request to receive instructions.

The **President** consults the Commission on the question whether it is best to enter upon a thorough discussion immediately, or to charge the two technical subcommissions or other delegates to make a preliminary examination.

Colonel **Gross von Schwarzhoff** thinks it preferable to take up the general discussion immediately, subject to deciding afterwards, if necessary, whether they should refer the examination to the two subcommissions.

This procedure is adopted.

The general discussion is opened.

Colonel **Gross von Schwarzhoff** speaks as follows:

GENTLEMEN: Our honored colleague, Colonel **GILINSKY**, has requested us not to vote, but to discuss the propositions which have been formulated in his report on the first point of Count MOURAVIEFF's circular.

I feel constrained to comply with this request and to express my opinion. I shall do so with perfect frankness and without any reservation. First, however, I wish to say a few words in reply to General **DEN BEER POORTUGAEL**, who made himself the warm defender of the propositions even before they had been submitted to us. He did so in elevated and picturesque language, for which I envy him, and of which we all recognize the high eloquence. But I am unable to agree with all the ideas he has expressed. *Quis tacet consentire videatur*, says a Latin proverb and I would not like my silence to be taken for assent.

I do not believe that among my honored colleagues there is a single one ready to admit that his sovereign, his Government, is engaged in working for the inevitable ruin, the slow but sure annihilation of his country. I have no

mandate to speak for my honored colleagues, but as far as Germany is concerned, I can reassure her friends completely and dissipate all benevolent anxiety regarding her. The German people are not crushed beneath the weight of expenditures, and taxes; they are not hanging on the edge of the precipice, they are not hastening towards exhaustion and ruin. Quite the contrary; public and private wealth is increasing, the general welfare, and *standard of life*, are rising from year to year.

As for compulsory military service, which is intimately associated with these questions, the German does not regard it as a heavy burden, but as a sacred and patriotic duty, to the performance of which he owes his existence, his prosperity, his future.

I return to the propositions of Colonel GILINSKY and to the arguments which have been advanced, and which to my mind are not consistent with one another.

On the one hand, it is feared that excessive armament may lead to war; on the other, that the exhaustion of economic forces will make war impossible. [28] As for me I have too much confidence in the wisdom of sovereigns and nations to share such fears.

On the one hand, it is pretended that only those measures are necessary which have long been practiced in some countries and which therefore present no technical difficulties. On the other hand, it is said that this is precisely the most difficult problem to solve and that for it a supreme effort is necessary.

I am entirely of the latter opinion. We shall encounter in fact insurmountable obstacles, difficulties that may be called technical in a little larger use of the term.

I think that the question of troops cannot be considered entirely alone, separated from a crowd of other questions to which it is almost subordinate.

Such are, for example, the extent of public instruction, the length of active service, the number of established regiments, the troops in the army units, the number and duration of enrolments under the flag, that is to say, the military obligations of retired soldiers, the location of the army corps, the railway system, the number and situation of fortified places.

In a modern army all such things are connected with each other and form, together, the national defense which each people has organized according to its character, its history, and its traditions, taking into account its economic resources, its geographical situation, and the duties which devolve upon it.

I believe that it would be very difficult to replace this eminently national task by an international agreement. It would be impossible to determine the extent and the force of a single part of this complicated machinery.

It is impossible to speak of effectives without taking into account the other elements which I have enumerated in a very incomplete manner.

Again, mention has been made only of troops maintained in mother countries, and Colonel GILINSKY has given us the reason for this, but there are territories which are not part of the mother country, but are so close to it that troops stationed in them will certainly participate in a continental war, and the countries beyond the seas. How could they permit a limitation of their troops if colonial armies, which alone menace them, are left outside of the agreement?

Gentlemen, I have restricted myself to indicating, from a general point of view, some of the reasons which, to my mind, are opposed to the realization of



the desire, surely unanimous, of reaching an agreement on the subject before us.

Permit me to add a few words regarding the special situation of the country that I have the honor to represent in this body.

In Germany the number of effectives is fixed by an agreement between the Government and the Reichstag, and in order not to repeat every year the same debates, the number was fixed for seven and later for five years.

This is one of the arguments advanced by Colonel GILINSKY when he declared that he asks of us nothing new. At first sight, gentlemen, it might seem that such an arrangement would facilitate our adhesion to a similar proposal.

But apart from the fact that there is a great difference between municipal law and an international convention, it is precisely our quinquennium which prevents us from making the proposed agreement.

There are two reasons against it. First, the international period of five years would not synchronize with the national period of five years, and this would be a serious inconvenience.

Furthermore, the military law which is to-day in force does not fix a special number of effectives, but on the contrary it provides for a continuous increase up to 1902 or 1903, in which year the reorganization begun this year will be finished. Until then, it would be impossible for us to maintain even for two consecutive years the same number of effectives.

Colonel Gilinsky replies that it is impossible for him to speak in opposition to the arguments of a domestic nature advanced by the delegate of Germany. If he proposes an agreement, it is because he believes it possible for the States to make adequate arrangements for enforcing it.

As to Germany, the increase in progress is not so considerable that it could not be checked for the short period of five years or even less. The German army would not suffer thereby.

As to the wealth of nations, Colonel GILINSKY did not say that all countries were being impoverished, for there are some which are progressing in spite of military expenditures; but these expenditures are certainly not an aid to public prosperity. Increasing armaments are not of a nature to add to the wealth of Governments, although they may be profitable to some individuals.

[29] He willingly admits that railroads have a great influence on the defense of a country. An army would have to be much more numerous if it were not united within by many railways.

The railroads increase the possibility of bringing help to all points of the frontier. This is why a country abounding in railroads can diminish its army or at least not further increase it.

As for countries beyond the sea, he admits exceptions, notably among those whose army is small or in process of formation. What is necessary here is not to adopt a general rule covering everything, but to find a formula giving satisfaction if not to all, at least to a large number.

Colonel Gross von Schwarzhoff says he has a few words to say in reply. He fears that he has not been understood.

He has not denied that another use might be found perhaps more humanitarian for the money spent on armaments, he merely wished to reply to language which perhaps (certainly, in his opinion) is a trifle exaggerated. The number of troops alone does not afford a proper basis of comparison for the strength of

armies, but there are many other things that must be taken into consideration. While maintaining the number of its troops, any Power can increase its military strength. The equilibrium which is thought to exist at present, will be destroyed. To reestablish it, it is quite necessary that the other Powers which, perhaps, will not be able to employ the same measures, be free to choose among all the means accessible to them.

Jonkheer van Karnebeek desires to take the floor, not only because the German delegate has made General DEN BEER POORTUGAEL personally a party to the issue, but because his considerations equally bore on one side of the question that could be taken up by the non-technical delegates.

He declares that, if Colonel GROSS VON SCHWARZHOFF contends that the Russian proposals raise very great technical difficulties, perhaps even insurmountable ones, it is not he who will pretend the contrary. If, however, the meaning of the words of the Colonel is that the question does not merit the most serious attention of the Conference and even of the entire world, and that the motives which have led the Russian Government to submit these proposals to the Conference are not well founded, he permits himself to declare that he is of an opinion that is diametrically opposed, and that he will not be the only one so believing.

Of course, it may be that in some countries military expenditures press less heavily than elsewhere, but it must be recognized that the sums devoted to armaments might, even in these countries, be employed more usefully for a different purpose.

There are other countries where the people do not take the same views as the German delegate and where the expenditures press very evidently upon public prosperity.

Mr. GROSS VON SCHWARZHOFF will be the first to affirm that the question ought not only to be viewed from the standpoint of the countries whose prosperity has apparently not suffered through armaments; but even in those States it must be asked if these expenses are really necessary for national defense or whether they are rather the consequence of international competition in this matter. Now, the fundamental idea of the Russian propositions is precisely that the burden of armaments may be reduced if an agreement can be secured for diminishing its international competition.

But it is necessary still to view the question from another point of view.

There is for the several Governments not only an external danger to provide against, but they have also to take into account opinion at home, which may become in the course of time a peril.

Enormous military expenditures which burden nations may become the cause of dangerous weapons against the established social order in the different countries. And if, because of technical difficulties, we should too readily declare ourselves incapable of making an effort to reach a solution of this important question we should be playing the game of those who find their advantage in agitation against the existing order of things.

Doctor Stancioff, first delegate of Bulgaria, delivers the following address:

I have the honor to take the floor to express the sympathy of the Bulgarian delegation in favor of a proposal, from whatever source it may come, that would tend to the non-augmentation of the present effective armed forces for a fixed period.

For if every nation is a partial mother in respect to its privileged child, the

soldier, in order that he may never be in a state of inferiority compared with those who surround him, it is not less certain, that the possibility of a check in the increase of armament would be an economy and a source of wealth for the peoples that might subscribe to it.

Armed peace is ruinous for small States, whose needs are numerous and who have everything to gain by investing their means in the development of industry, of agriculture and the requisites of progress.

[30] It is this point of view that I take in desiring to bring away from the Conference the assurance of seeing Bulgaria increase in domestic greatness, without the anxiety for an increase of forces that the example of other nations imposes upon her.

From the moment that the circular of his Excellency Count MOURAVIEFF was published and discussed, I often heard it said that the proposal that we are considering would be an infringement upon sovereign rights and the liberty of nations. But, since we are discussing it freely, we shall also apply it with goodwill when it shall have received its sanction in unanimity of consent.

And without having the pretension of influencing anyone, I indicate in advance my vote in order that the countries which surround mine may take note of the idea that inspires us and the practical development that we wish for our country in its moral happiness and its progress.

General den Beer Poortugael: I have to state that our honored colleague Colonel GROSS VON SCHWARZHOFF is quite mistaken in saying that I have been a defender of the proposals of Colonel GILINSKY. Of these proposals I knew not a single word until they were presented to the full Commission in our last meeting.

What I have defended is the first cause of the circular of Count MOURAVIEFF, as I have said, in a manner that cannot be misunderstood, and if I have defended it warmly, it is because it deserves it.

The delegate of Germany has said that all that I have advanced on the crushing taxes and ruinous imposts caused by the ever-increasing armament is not applicable to his country.

While felicitating him thereon, I state that I did not have in view the present conditions of things but the future. That is why I used the words: "continuing in this way," and I think that this way is always dangerous even for the richest States.

As to obligatory service, of which Colonel GROSS VON SCHWARZHOFF has spoken in the refutation that he has done me the honor to address to me, I have defended its principle for almost forty years. Like himself, I consider obligatory service or personal service a sacred and patriotic duty, but, not having mentioned that service in my speech, all that the delegate of Germany has said on that point can bear no relation to my speech.

No one asking the floor, the President declares the general discussion closed.

He remarks that the objections presented would only relate to the proposals relative to the forces of land armies. The proposals of the Russian delegate as to the navy have not even yet been developed.

He asked the meeting whether it is agreeable to it to discuss the questions of detail in full committee, or whether it would not be preferable to entrust its examination either to the technical subcommissions, or to a special committee, upon which the Great Powers particularly would be represented, the solution depending upon them alone.

Mr. **Raffalovich** supports the reference to the subcommissions of the two Russian proposals that have different bases.

His Excellency Sir **Julian Pauncefote** would prefer that a special committee be created for the examination of each proposal.

Mr. **Bourgeois** sees no inconvenience in the creation of this committee, but he would wish that the small States that are necessarily inclined to the maintenance of peace be represented equally thereon.

The **President** puts the question to a vote by a division.

It is decided to refer the Russian proposals to a technical examination by seventeen votes (United States of America, Belgium, Spain, France, Great Britain, Italy, Japan, Netherlands, Persia, Portugal, Roumania, Russia, Serbia, Siam, Sweden and Norway, Turkey and Bulgaria) against two (Germany and Austria-Hungary), with three abstentions (Denmark, Greece, Switzerland).

Mr. **Raffalovich** suggests charging each subcommission to constitute and form a special committee.

This motion is adopted.

The **President** proposes to the first subcommission that it meet immediately.

*(Adopted.)*

The meeting adjourns.

## SIXTH MEETING

JUNE 30, 1899

---

His Excellency Mr. **Beernaert** presiding.

The minutes of the meeting of June 26 are read and adopted.

Mr. **Miyatovitch**, first delegate of Serbia, desires to make a declaration respecting the minutes of the last meeting. He expresses himself in the following terms:

We did not have the intention until to-day to speak on the question that is the order of the day, because we thought that it belonged to the great Powers to express themselves first on this subject.

Agreement between the great Powers would have, it seems to us, facilitated an agreement among the small ones, whilst a declaration on the part of the small States saying that they had accepted or would not accept the proposal made, would not seem to us to make any decisive contribution or to have any serious influence upon the success of the work that is uniting us here.

But, since there has already been in this Commission a sort of direct appeal to the Powers whose neighbors we are, we consider it our duty towards this high assembly and a courtesy towards the delegation that has made the appeal in question, to declare ourselves at once.

We have, therefore, the honor to declare emphatically and in all sincerity that Serbia is perhaps that country of all the world that most hopes for a long peace, one that will be uninterrupted and honorable.

The program of the Government, which its sovereign himself has outlined, and in recent times again taken up on several occasions, consists in concentrating its principal forces with a view to developing the economic resources of the country.

Acting in conformity with the pacific spirit of this program, it has, since the circular of Count **MOURAVIEFF**, reduced its military forces fully one-fourth. We could mention several other acts which would abundantly prove how pacific are our desires.

And we can only congratulate ourselves when we hear that a country that is a neighbor and a friend of Serbia declares, under such solemn conditions a wish to follow a policy that we ourselves are already practicing.

And our hope that we are not to be hindered in this work of ours, nor forced out of peaceful paths, is the more sincere since we love to believe that, through international peace, international justice may be attained.

We have, in short, the firm conviction that the great movement of lofty ideas, called forth through the entire world by the generous initiative of His Majesty the Emperor of Russia, while fortifying the sentiment of solidarity among civilized nations, will end by giving a decisive support to the small Powers

which in their national aspirations ask only respect for their independence, justice and equity.

And, while awaiting the arrival of that moment, we shall never fail—although we continue to bestow upon our army a legitimate solicitude—to associate ourselves heartily with all enterprises that have humane and civilizing tendencies. So it is exclusively these ideas that have inspired all our votes in the Conference.

As to the concrete question of the non-augmentation of forces and fixing of military budgets, the positive instructions that we have received from our Government since the last meeting enable us now to cast a definite vote. Nevertheless, as the moment for voting has not yet arrived, we think that we should await that time before declaring our position.

The **President** recalls that following a decision taken in the last meeting of the Commission, the Russian proposals were referred for examination to two technical subcommissions.

The committee, charged by the first subcommission with examining the proposals of Colonel GILINSKY, met twice and after a thorough exchange of views, of which no minutes were kept, agreed on the following wording:

The members of the committee, charged with the examination of the proposals of Colonel GILINSKY relating to the first topic of Count MOURAVIEFF's circular have met twice.

With the exception of Colonel GILINSKY, they have decided unanimously:

[32] 1. That it would be very difficult to fix, even for a term of five years, the number of troops without regulating at the same time other elements of national defense;

2. That it would be no less difficult to regulate by an international agreement the elements of this defense, organized in each country upon very different principles.

Hence, the committee regrets its inability to accept the proposition made in the name of the Russian Government. The majority of its members believe that a more thorough study of the question by the Governments themselves would be desirable.

General Zuccari states the position that the Italian Government intends to take with regard to the questions raised by the Russian proposals on forces.

The forces of the Italian army in peace are fixed by organic laws which the Italian Government does not intend to change.

The Italian Government intends to retain the same liberty of action as the other Powers since an international engagement on this matter is not now deemed possible.

The **President** observes that the point is to state the impossibility of arriving at a positive result immediately, but with the desire of seeing the Governments themselves take up the study of the questions raised by the first proposition of Count MOURAVIEFF's circular. He asks if Colonel GILINSKY can support this wish.

Colonel Gilinsky replies that from the moment that the immediate understanding cannot be brought about, he considers it very desirable that the Governments should make a preliminary study.

The **President** asks if any member of the assembly has any other proposal to make.

Nobody asks the floor.

The President asks if there is any opposition to the conclusions expressed in the opinion of the technical committee.

He considers the silence of the assembly as a complete adhesion and believes that under the circumstances he need not call for any votes. In short, there is no resolution to be taken and the committee does not even ask for a study together. For the moment, it is for each country to await a preliminary and more thorough study. (*Numerous indications of consent.*)

Baron Bildt, first delegate of Sweden and Norway, makes the following declaration:

I venture to say that in no country have the Russian proposals been received with a more spontaneous and more sincere sympathy than in Sweden and Norway. Profoundly convinced of the necessity of peace, we have for nearly a century pursued a policy which looks to nothing but the maintenance of good relations with other Powers, and our military establishments have always had only one object: the protection of our independence and the maintenance of neutrality. A message of peace, having in view a limitation of the armaments which now weigh heavily upon the world, could not be otherwise than welcome to us, and it could not come from any better source than our powerful neighbor. If, notwithstanding this, we have not been able to support the proposals advanced by Colonel GILINSKY, it is not because we have not had the same desire as he as to the question of what is to be done, but because we are blocked by an important question of form.

The Russian proposals, in short, make no difference between armies already organized according to the principles of modern military science, and those which are still governed by former conditions, even superannuated ones, or those which are in process of transformation.

They make no distinction, moreover, between armies that constitute a complete military weapon, equally adapted to attack or defense, and those which either by the short duration of service, or by other distinctive qualities, manifestly show that they have merely a defensive character. This is precisely the case with the Swedish and Norwegian armies, organized on the basis of obligatory service of a few months and being in a state of transformation.

When I shall have mentioned that the greater number of units of the Swedish army rest on a system dating two centuries ago, I shall, I think, have said enough to convince you that this is not an organization that we could engage to maintain even for five years.

We have, therefore, not been able to vote for the Russian proposal as it has been formulated, and I state this fact with sincere regret—I will say more—with genuine sorrow. For, gentlemen, we are about to terminate our labors recognizing that we have been confronted with one of the most important problems of the century, and that we have accomplished very little towards its solution.

[33] Let us not indulge in illusions.

When the results of our deliberations shall become known, there will arise, notwithstanding all that has been done for arbitration, the Red Cross, etc., a great cry: It is not enough!

And this cry: "It is not enough," most of us in our consciences will acknowledge to be just. Our consciences, it is true, may also tell us in consolation, that we have done our duty, since we have faithfully followed our instruc-

tions. But I venture to say that this duty is not fulfilled and that there still remains something for us to do.

I am going to explain.

The Czar's proposal has been strewn with all the flowers of rhetoric by men much more eloquent than I. It will suffice for me to say that, while his idea is grand and beautiful and while it responds to a desire felt by thousands upon thousands of men, that means too that it cannot die. If the Emperor will only add to the nobility of heart and generosity of spirit, of which he has given proof, the virtue of perseverance, the triumph of his work is assured. He has received from Providence, not only gifts of power, but also that of youth. If the generation to which we belong is not destined to accomplish the task, he may count on that which is coming soon to take our places. The future belongs to him. But, meanwhile, all of us who desired to be each in his little sphere of activity, his humble and faithful coworkers, have the duty of searching for and explaining to our Governments with entire frankness and complete veracity, each imperfection, each omission, which may occur in the preparation or in the execution of this work, and of seeking with tenacity the means of doing better and doing more, whether these means be found in new conferences, in direct negotiations or with all simplicity in the setting of a good example. There is the duty which remains for us to accomplish.

In conclusion, I declare that I support the proposition that his Excellency Mr. BEERNAERT has just made. (*Applause.*)

Mr. Bille, first delegate of Denmark, states that the views expressed by Baron BILDT are in complete harmony with those of the Danish Government.

Mr. Léon Bourgeois expresses himself in the following terms:

I have been very happy to listen to the eloquent remarks that Baron BILDT has just delivered. They express not only my personal opinion and the opinion of my colleagues of the French delegation, but, I am sure, the unanimous opinion of the members of the Conference.

I wish then, gentlemen, to join in the appeal which the delegate of Sweden and Norway has just made. I believe that to express completely the thought by which it was animated, the Commission must do something more.

I have read carefully the text of the conclusions adopted by the technical committee. This report shows with great precision and force the difficulties now in the way of concluding an international convention on the limitation of armaments. The examination of these practical difficulties was indeed exactly the work of the technical committee and no one thinks of criticizing the terms in which it has acquitted itself of its task.

But the Commission has the duty to consider from a point of view that is more general and lofty the problem presented by the first paragraph of Count MOURAVIEFF's circular. The Commission certainly does not wish to remain indifferent to the question of principle presented to the civilized world by the generous initiative of His Majesty the Emperor of Russia. It seems to me necessary that an additional resolution be adopted by us to express more precisely the sentiments which animated the preceding speaker and which should make us all desire that the work undertaken be not abandoned.

This question of principle is summed up in very simple terms: Is it desirable to restrict the military charges that are weighing on the world?

I listened with great care in the last meeting to the remarkable speech of



Colonel GROSS VON SCHWARZHOFF. He presented with the greatest possible force the technical objections which, according to his view, prevented the Commission from adopting the proposals of Colonel GILINSKY. It did not, however, seem to me that he at the same time sufficiently recognized the general ideas in pursuance of which we are here united. He showed us that Germany is easily supporting the expense of its military organization and reminded us that notwithstanding this his country was enjoying a very great measure of commercial prosperity.

I belong to a country which also supports readily all personal and financial obligations imposed by national defense upon its citizens, and we have the hope of showing next year to the world that they have not lessened the activity of our production nor hindered the increase of our economic prosperity. But,

Colonel GROSS VON SCHWARZHOFF will surely recognize with me that, [34] for his country as for mine, if the considerable resources that are devoted to military organization were in part put to the service of pacific and productive activities, the total of prosperity of each nation could not but increase at a much more rapid pace.

This is the idea which it is important not only to express here among us but also, if possible, to state before the opinion of the world.

Therefore, if I were called upon to vote on the question laid down by the first paragraph of the proposition of Colonel GILINSKY, I should not hesitate to express myself in the affirmative.

However, we perhaps have no right here to consider only how our own particular country bears the burdens of armed peace. Our task is a higher one: We are called upon to examine the situation of the nations as a whole.

In other words, we not only have to cast private votes in accordance with our own particular situation. If there is a general idea which may serve for the common welfare, we should try to elicit it. It is not our mission to constitute ourselves a majority or a minority. We must not bring out what may separate us, but we should seek what is likely to unite us.

If we deliberate in this spirit, I hope we shall find a general formula which, making reservation with regard to the difficulties of which we are all aware, will at least express the idea that the limitation of armaments would be a benefit to humanity and give the Governments the necessary moral support in order to enable them to pursue this noble purpose.

Gentlemen, the purpose of civilization appears to us to be to place more and more above the struggle for existence among men an agreement among them for the struggle against the cruel servitudes of matter. This is the same idea which the initiative of the Czar proposes that we affirm with respect to the relations among the nations.

While it is a painful necessity to be obliged to give up a positive and immediate understanding on this matter at present, we must try to prove to public opinion that we have at least sincerely examined the problem placed before us. We shall not have labored in vain if, by formulating general terms, we indicate the purpose toward which we unanimously desire, as I hope, to see the civilized peoples as a whole march. (*Applause.*)

The President requests Mr. BOURGEOIS to kindly frame in writing the wish which he has just so eloquently expressed.

**Mr. Léon Bourgeois**, proposes the following wording:

The Commission is of opinion that the restriction of military charges, which are at present a heavy burden on the world, is extremely desirable for the increase of the material and moral welfare of mankind.

As no delegate asks the floor in regard to the proposition of Mr. BOURGEOIS, which has just been heard with such favor, the **President** declares it to be adopted.

**Mr. Delyanni**, a delegate from Greece, wishes to explain why he could not support the propositions of the delegate from Russia, as well as the reasons why his Government could not now join in measures which would hamper its efforts toward the reorganization of its army.

Far be it from me (he said) to disregard the breadth of views of the Russian circular of December 30, 1898; on the contrary I admire the magnanimity of His Majesty the Emperor NICOLAS II, who, in order to lighten the heavy burdens which weigh on the peoples for the maintenance of large armies, proposes to encourage the non-augmentation, for a period to be fixed, of the present effective strength of the armed forces of land and sea, as well as of war budgets relating thereto, and a preliminary study of the ways in which it might even be possible in future to accomplish a reduction of the aforementioned effective strength and budgets. I believe, however, that we should, before reaching a final decision on this grave question, take into account the peculiar situation of each of the countries represented at the Conference; thus, as far as Greece is concerned, I should like to submit to the judgment of the Conference and develop the views of my Government on the matter which forms the first theme of the Russian circular.

In consequence of budgetary difficulties and of the financial situation in which Greece has been during recent years, we have been unable to deal seriously with the question of reorganizing our army according to the plans generally accepted by all other countries, or of endowing it with improved armament.

After the last war, the Greek Government found it necessary to take into serious consideration the reorganization of its army and navy on a new basis, as well as the improvement of its military and naval armament, but as these questions of such capital importance to the country are under study and [35] as it has been impossible as yet to reach any definite decision, it does not seem possible to us to assume any formal engagements on these questions, that is, engagements which would bind the Greek Government, in case the studies which are now under way in regard to its military situation should induce it subsequently to increase to a certain extent the nucleus or numbers of its military and naval forces in time of peace; especially as the strength of its present army is much below the average of the armies of the other nations, particularly of those whose budgetary situation and population offer any analogy with Greece; for, if Greece were to keep within the same proportions as the nations of which I have just spoken, it would have to maintain in time of peace a much more numerous army than that which it maintains at present.

For these reasons Greece, while doing homage to the generous idea which inspires the Russian circular, could not in a general way assume obligations of a prohibitory nature in regard to the non-augmentation, for a period to be prescribed, of the present effective strength of her land and sea forces, as well as of

the war budgets relating thereto, or the reduction in future of the aforesaid effective strength and budgets.

The assembly now takes up the examination of the Russian propositions relating to the navy.

The President now reads the report of the subcommission, worded as follows:

The second subcommission met Monday the 26th instant, immediately after the meeting of the First Commission, in order to take into consideration the Russian propositions concerning the navy, as formulated by the delegate from Russia, Captain SCHEINE.

The latter kindly gave the subcommission some subsequent explanations in order to accurately define the sense and scope of the propositions specified in Annex G of the summary account of the meeting of the First Commission of June 23.

Captain SCHEINE, after stating that the budget of the navy as referred to in the Russian proposition, comprises the extraordinary as well as the ordinary budget, made the important communication that it is understood as a matter of course that each Power preserves full liberty in regard to the amount which it pledges itself not to surpass for a period of, say, three years.

Russia herself proposes preliminarily to fix the amount at ten per cent. more than her present budget, but each Power might choose as a basis for the pledge a budget increased to such extent as might appear necessary to it, going as high as the maximum of the increases announced by the Powers.

From the exchange of views which took place in the subcommission it appears:

1. That some delegates foresee as a matter of fact the possibility of accepting fundamentally the Russian propositions, but must wait, before expressing themselves permanently, until they receive instructions from their Governments.

2. That the majority of the delegates of the subcommission did not wish to express themselves to this effect, since in the first place constitutional difficulties would be encountered in parliamentary countries against pledging in advance the budgetary vote of the legislative assemblies.

When, finally, after a prolonged discussion, it appeared impossible to come to an agreement or to find any other expedient than that of leaving the question unsettled, the president Mr. VAN KARNEBEEK proposed that the delegates recommend to their Governments a study of the Russian propositions, which would enable them to decide at a subsequent conference.

As this proposition did not meet with the sanction of the subcommission (5 votes for, 5 against, and 5 abstaining), the latter had to take a vote on a motion of Captain SCHEINE having in view extending an invitation to the delegates to obtain, within the shortest possible time, instructions which should enable them to pass in a conclusive manner before the end of the Conference on the propositions of the Russian Government. Seven votes having been given for, one against, and one abstaining, this proposition of Captain SCHEINE had to be regarded as being adopted; and the subcommission, having thereafter instructed four of its members to report the results of the deliberations to the First Commission, the undersigned, constituting the drafting committee, therefore have the honor to state that the opinion which prevailed in the subcommission, while not implying an acceptance of the Russian propositions, does not preclude the hope that it will be possible to find a way to accomplish the purpose of introducing "a halting period" in naval budgets.

It remains for the First Commission to confirm or disapprove by its vote the afore-mentioned proposition of Captain SCHEINE.

(Signed) BILLE.  
SOLTYK.  
SCHEINE.  
CORRAGONI D'ORELLI.

[36] The PRESIDENT states that, in his personal judgment, the decision which the subcommission has reached is not very happy.

Here the Conference has almost reached the end of its labors, and the Russian propositions have been known for a long time; if the delegates have been unable to obtain precise instructions up to the present time, it surely is not likely that they will receive any during the short time remaining before the conclusion of our labors.

The solution reached in regard to the question of armaments on land would also seem to him to be the best with regard to the navy.

Mr. Bille, taking the view of Mr. BEERNAERT, gives the following explanation:

The committee which drew up the report which you have just heard realizes the fact that it may not have seemed satisfactory to you for the reason that it does not invite the First Commission to express itself for or against the Russian propositions. The fact is that in the subcommission no conclusive argument, sufficient to adopt or to reject outright the propositions of the Russian delegation, was presented.

The difficulty was encountered of fixing the naval budgets in advance for a period of three years by means of an international agreement.

We thought that this difficulty was of the kind which ought particularly to be dealt with by the Governments.

It may be that they will hesitate to pledge themselves along this line; it may also be that they will not be afraid to do so. It was for this reason that the subcommission thought it would have to confine itself to leaving the question open. If the difficulty in question were removed, which does not seem impossible to me, it would be necessary to examine more closely and elucidate more clearly the very procedure by which the Russian Government wishes to succeed in establishing those proportions between the naval budgets from which should automatically spring the limitation of expenses which is after all the purpose which everybody would like to attain.

Meanwhile, we did not wish to exclude, even if it were only out of courtesy toward the delegate from Russia, the possibility of some Governments' giving instructions before the end of the Conference; but I do not deem this eventuality probable, and I therefore do not hesitate to support the proposition just made by the honorable president.

Captain Scheine believes he is certain that several delegates do not regard it as an impossibility to reach an agreement during this Conference itself, which would be a very fortunate result. The obstacles which stand in the way of a final and immediate solution of the question are principally parliamentary and budgetary and not technical.

The President persists in believing that Mr. SCHEINE is laboring under illusions when he thinks the instructions necessary might yet arrive before the end of the Conference.

Captain **Scheine** does not insist that they await the arrival of these instructions and he endorses the proposition of his Excellency Mr. BEERNAERT to the end that the Commission express the desire to have the Governments proceed themselves to make a new and thorough study of the question.

This proposition is adopted without dissent.

On the proposition of the **President**, Mr. VAN KARNEBEEK is designated as reporter of the First Commission at the Conference. (*Assent.*)

Mr. **Raffalovich** proposes to have printed in full the minutes of the meeting of June 26, as well as those of to-day, June 30. (*Assent.*)

The meeting adjourns.

## SEVENTH MEETING

JULY 17, 1899

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Jonkheer van Karnebeek presiding.

The **President** takes possession of the chair and expresses himself as follows:

GENTLEMEN: When, on the eve of the Conference, we found ourselves so fortunate as to be able to express respectful congratulations to His Majesty the Emperor of Russia, we certainly did not think that during the course of [37] our meetings we should be obliged to join in the grief of His Majesty and of the royal family.

I am sure, gentlemen, that I shall be expressing a sentiment which you all have in your hearts and which is shared by all the members of the Conference, if I pay at the beginning of this meeting—the first held since the sad event—the tribute of our profound and respectful sympathy in the grief caused His Majesty the Emperor, the august imperial family, and the whole Russian people, by the death of His Imperial Majesty the Hereditary Grand Duke.

As vice president of the Conference, I take the liberty to request our honorable president, who is now present, to kindly act as the intermediary to express to his illustrious sovereign the humble and sincere condolences of the Conference.

His Excellency Mr. **Staal** expresses his deep gratitude at this testimonial of sympathy in the painful circumstances through which the imperial family is passing; he will hasten to convey to his august master the condolences which have been expressed, in the name of the Conference, in such lofty terms by the honorable vice president.

The **President** states that his Excellency Mr. **BEERNAERT** has been prevented from responding to the call made to him, other duties of great importance retaining him in Belgium.

He adds that in the absence of Mr. **BEERNAERT** he will be the one to have the honor of taking his place to-day.

He appeals to the indulgence of the Commission, for he will have to perform double functions, that of president and of reporter; he gives assurance that the latter capacity will not affect his impartiality as president.

The order of the day embodies in the first place an examination of the minutes of the last meeting, which have been printed and distributed.

As no one has formulated any observations, the minutes are adopted.

The **President** places under discussion the draft of the report which will be presented to the Conference in the name of the First Commission.

It is decided that the four divisions thereof shall be discussed successively.

The **PRESIDENT** opens the discussion on the first part of the report.

**Mr. van Karnebeek** observes that he took the liberty, with a view to securing a better wording, of slightly changing the text of the three points in regard to which it was possible for the Commission to come to an agreement.

After an exchange of views between **Colonel Gross von Schwarzhoff**, **Colonel Gilinsky**, **Count de Macedo**, **General den Beer Poortugael**, and the **Reporter**, it is decided to restore, as regards the three points of the first part of the report, the text as it was voted for by the Commission. The delegate from Germany particularly observed that in his opinion the original wording expressed the technical sense more exactly.

**Mr. Beldiman** asks that a statement be made in the report, in parentheses, of the names of the Powers which voted against the propositions or which refrained from voting.

**Count de Macedo** sees no objection to this proposition, but in case it is adopted he would also like to have indicated the reasons for which he abstained from voting to prohibit the use of expansive bullets.

**Captain Mahan** expresses the same desire in regard to shells with asphyxiating gases.

The **President** states that the request of **Mr. Beldiman** and **Count de Macedo** tends to produce once more the minutes of the Commission, which is not the object of the report.

**Mr. Raffalovich** is of the same opinion, and he adds that the reports of **General den Beer Poortugael** and **Count Soltyk** are sufficiently explicit and easy to consult in order that **Mr. Beldiman** may find satisfaction therein.

**Mr. Beldiman** would like at least to have mention made of the date of the meetings at which the votes were cast.

Although the first two points of this part of the report do not appear to be of very great importance and although unanimity was lacking in regard to the last two, the **Reporter** thought there was no reason for the Commission to neglect these results.

To him the best way to make them of value seems to be, to propose to the Conference an extension of the Declaration of St. Petersburg of November 29, 1868, to the three points in question for a period of five years.

Among the Powers represented at the Conference there are a certain number which did not participate in the Declaration of St. Petersburg.

The advantage of his proposition would be that their signatures would imply their adhesion to the Declaration of 1868.

By applying the five-year limit to all three points, we should thus in a certain [38] measure be meeting the considerations which prevented the representatives of two Governments at this Conference from joining in the vote in regard to expansive bullets.

**Captain Mahan**, **Colonel Gilinsky**, **Mr. Martens**, **Mr. Beldiman**, **Captain Scheine**, and **Mr. Bourgeois**, make the following objections to the proposition submitted in the draft report:

As regards the prohibition of the use of projectiles whose sole purpose is to spread asphyxiating or deleterious gases and the use of expanding bullets, the term of five years substituted instead of a permanent prohibition would change the scope of the decision which was voted for by the Commission. This would therefore be a new proposition which would have to be voted on and for which new instructions would be necessary. (Messrs. **MAHAN** and **SCHEINE**.)

Colonel **Gilinsky** insists that the prohibition of the use of expanding bullets should continue forever, as was decided several times by the subcommission and the Commission.

The consequence of the proposition would be to change the character of the Declaration of St. Petersburg, which was considered as being concluded forever; it appears difficult, from a legal standpoint, to induce Powers which did not sign the Declaration of St. Petersburg to adhere thereto implicitly and incidentally by signing the convention which will be the result of the Hague Conference, since the St. Petersburg Declaration has not been discussed here. (Messrs. **GILINSKY**, **MARTENS**, and **BELDIMAN**.)

There were reasons for signing an agreement in perpetuity with regard to certain points and for a limited period with regard to others, since it was necessary to make a distinction between the known and the unknown.

It would therefore be useful to maintain the original texts which take this difference into account. (Mr. **BOURGEOIS**.)

The **Reporter** answers that it is a question of presenting to the Conference the results of the examination of the Commission in the form of a Convention. If the St. Petersburg Declaration is not taken as a basis by extending it to the three points in question for a period of five years, it would be necessary, since it is desired to adhere strictly to the three votes, to have three different conventions, and it would seem that there would then be less chance of arriving at a presentable result.

The wording proposed by him in no wise affects the force or duration of the engagements assumed in the St. Petersburg Declaration. These engagements will not be limited to five years. This limitation in the proposed formula bears only on the new points which he proposes to connect with this Declaration.

In connecting them therewith, the new engagements will be placed under the *régime* of said Declaration, which is an important matter as regards their scope with respect to non-signatory Powers.

The **President** now reads the following draft proposed by Mr. **MARTENS**, which is intended to serve as a preface to the engagement to be undertaken.

The signatory Powers, being animated by the same sentiments which found expression in the St. Petersburg Declaration, engage themselves for a period of . . . . ., to:

Captain **Mahan** deems it useless to speak of sentiments; it is a question of standing on practical ground; he therefore proposes the following formula: "The signatory Powers declare. . . . . etc."

At the initiative of Mr. **Bourgeois**, seconded by Mr. **Raffalovich**, the **President** proposes to submit to the Conference the three texts as voted on by the Commission and to entrust to the Committee the final wording of the Convention to be concluded.

This proposition is adopted.

Captain **Siegel** deems it useful to call attention to the fact that in the vote relating to the prohibition of projectiles whose sole purpose is to spread asphyxiating gases, several delegates, including himself, while the vote is represented in the report as being adopted without reservation by all the delegates, voted in the affirmative only on condition that there should be unanimity.



His Excellency Sir Julian Pauncefote says that as a matter of fact fourteen delegates were in this situation.

The **President** replies that the vote in question took place in the subcommission, whereas the report should be based on what took place at the plenary session.

Count **de Macedo** thinks that the word "sole" was inserted by mistake in the text of the report. He cites particularly a passage of the report of General **DEN BEER POORTUGAEL** of the first subcommission.

The **Reporter** as well as several delegates observe that the first subcommission concerned itself only incidentally with projectiles spreading deleterious or [39] asphyxiating gases, but that the second subcommission considered the question amply.

Captain **Mahan** and Captain **Scheine** say that the word "sole" was inserted purposely.

The **President** submits to discussion the second part of the report, which is adopted after a short discussion between General **den Beer Poortugael**, who asks for the omission of the word "perhaps" in the second to the last sentence, and Colonel **Gross von Schwarzhoff**, who insists on the maintenance of this word.

General **den Beer Poortugael** withdraws his request.

The **President** places the third part of the report under discussion.

Colonel **Gross von Schwarzhoff** is not certain that the vote of the Commission on the conclusions of the technical committee is indicated with sufficient precision in the report.

It would be well to state plainly that the Commission unanimously accepted the terms of the report presented by the technical committee in regard to the Russian proposition.

The **President** asks Mr. **GROSS VON SCHWARZHOFF** whether he has a new wording to propose.

The delegate from Germany replies that he has not prepared any.

Colonel **Gilinsky** observes that everybody is not agreed with the conclusions of the technical committee and that the resolution of Mr. **BOURGEAIS** was accepted unanimously.

An exchange of views takes place between Colonel **Gross von Schwarzhoff**, Mr. **van Karnebeek**, Mr. **Bourgeois**, and Mr. **Beldiman** on the conditions under which the Commission accepted the conclusions of the technical committee and the addition to the text as proposed by Mr. **BOURGEAIS** in the previous meeting. It is shown from this exchange of views that the Commission unanimously adopted the terms of the report of the technical committee, as well as the resolution formulated by Mr. **BOURGEAIS** at the preceding meeting, which was separately put to a vote by Mr. **BEERNAERT**.

Mr. **Bourgeois**, in order to give satisfaction to the wishes expressed in various quarters, proposes to word this part of the report as follows:

*Consequently, after unanimously adopting the propositions of the technical committee, the Commission adopted likewise unanimously, in order to interpret this idea, the resolution proposed to it for the purpose by the first delegate from France.*

The proposition of Mr. **BOURGEAIS** is adopted.

Mr. **Beldiman** proposes that the names of the delegates who formed part of the technical committee be added to the report.

Captain **Crozier** recalls the conditions under which this technical committee operated. The members took part in the work, not as delegates of Governments, but as mandataries of the subcommission in their individual technical capacity. He opposes the proposition of Mr. **BELDIMAN**.

Messrs. Baron **Bildt** and **Abdullah Pasha** expressed themselves in the same way as Captain **CROZIER**.

The **President** puts the proposition of Mr. **BELDIMAN** to a vote, and it is adopted by 12 votes to 10, with one abstention.

Captain **Mahan**, on behalf of the United States delegation, makes the following declaration:

The delegation of the United States of America have concurred in the conclusions upon the first clause of the Russian letter of December 30, 1898, presented to the Conference by the First Commission, namely, that the proposals of the Russian representatives for fixing the amounts of effective forces and of military and naval budgets, for periods of five and three years can not now be accepted, and that a more profound study upon the part of each State concerned is to be desired. But, while thus supporting what seemed to be the only practicable solution of a question submitted to the Conference by the Russian letter, the delegation wishes to place upon the record that the United States, in so doing, does not express any opinion as to the course to be taken by the States of Europe.

This declaration is not meant to indicate mere indifference to a difficult problem, because it does not affect the United States immediately, but expresses a determination to refrain from enunciating opinions upon matters into which, as concerning Europe alone, the United States has no claim to enter.

The words drawn up by Mr. **BOURGEOIS**, and adopted by the First Commission, received also the hearty concurrence of this delegation, because in so doing it expresses the cordial interest and sympathy with which the United States, while carefully abstaining from anything that might resemble interference, regards all movements that are thought to tend to the welfare of Europe.

The military and naval armaments of the United States are at present so small, relatively to the extent of territory and to the number of the population, as well as in comparison with those of other nations, that their size can entail no additional burden of expense upon the latter, nor can even form a subject for profitable mutual discussion.

[40] The third part of the report is accepted by the Commission.

The fourth part of the report is adopted without discussion.

His Excellency Mr. **Staal** proposes to express to the reporter the thanks of the Commission for all the trouble he has taken. (*Assent.*)

The meeting adjourns.

## EIGHTH MEETING

JULY 20, 1899

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Jonkheer **van Karnebeek** presiding.

The minutes of the previous meeting are read and adopted.

The **President** says that the discussion of Parts I and III of the report, which have been modified in accordance with the decisions of the Commission, must be resumed.

The reporter, **Mr. van Karnebeek**, says that the remark has been made to him that the vote relating to the prohibition of projectiles whose sole purpose is to spread asphyxiating gases was given unanimously with the exception of one voice, and that six votes of the majority were in the affirmative only on condition of there being unanimity. He recognizes that this is true, but nevertheless he makes an urgent appeal to the United States delegation. This delegation will be the judge of the situation and will see whether it should maintain its negative vote and thereby prevent unanimity from being obtained.

Captain **Mahan** says he is afraid to begin the discussion again. He would have liked to reserve that until the plenary session of the Conference. He speaks in the name of the United States delegation, which adopted a resolution on general principles and does not deem it logical to permit the use of submarine and submersible boats and to prohibit the use of shells filled with asphyxiating gases. It is impossible for him to reverse his original vote, because it is a question of principle.

The **Reporter** thinks it is better to come to a conclusion now in Commission than to return to the question in Conference.

Not having succeeded in modifying the stand of the United States delegation, the only thing remaining is to change point 2 of Part I by adding at the end "but of the majority, six votes were in the affirmative only on condition of there being unanimity."

Count **de Macedo**, after stating that he made a mistake in the preceding meeting when he thought that the word "sole" was not in the text relating to point 2, explains that he voted "yea" in order not to depart from the almost unanimous concert on a very secondary matter, although he is convinced that the use of the word "sole" has the effect of taking all the force away from the proposed prohibition and even of causing certain resolutions of the Conference to be regarded in a less favorable light.

A discussion participated in by Captain **Mahan**, Colonel **Gilinsky**, Mr. **Beldiman**, Captain **Scheine**, Colonel **Coanda**, and the **Reporter** is begun on the question whether the last paragraph of Part I shall be maintained.

Following observations presented by his Excellency Count **Nigra**, Mr. **Raffalovich**, Mr. **Motono**, Count **de Macedo**, Mr. **Beldiman**, and Mr. **Miyato-**

**vitch**, it is decided that the Commission shall propose to the Conference a declaration or a convention on each point separately.

[41] Being consulted on the three points, the Commission unanimously votes on the first one.

On the second point, by 17 votes (Germany, Austria-Hungary, Denmark, Spain, France, Italy, Japan [on condition of unanimity], Montenegro, Netherlands, Portugal, Roumania, Russia, Serbia, Siam, Switzerland, Turkey, Bulgaria); against two (United States and Great Britain).

On the third point by 16 votes (Germany, Austria-Hungary, Denmark, Spain, France, Italy, Japan, Montenegro, Netherlands, Roumania, Russia, Serbia, Siam, Switzerland, Turkey, Bulgaria); against two (United States and Great Britain); and one abstention (Portugal).

The **President** says that account will be taken in the report of the decisions which have just been reached.

The **PRESIDENT** states that the first part is thus settled.

Part III is adopted after substituting the words "with the exception of Colonel GILINSKY" in place of the words "without counting Colonel GILINSKY, author of the proposition."

The **President** declares the report adopted; he adds that the labors of the Commission are terminated, and at this juncture he asks that the Bureau be allowed to prepare the minutes of this meeting, which will be the last. (*Assent.*)

The meeting adjourns.



## FIRST SUBCOMMISSION

### FIRST MEETING

MAY 26, 1899

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His Excellency Mr. **Beernaert** presiding.

The **President** observes that the fundamental question submitted to the examination of the first subcommission may be expressed in the following words:

Should we conventionally waive the right to use any new improvement in the art of war and forbid the adoption in armies and navies of any new firearms and new explosives, as well as of more powerful powders than those now adopted both for guns and cannon?

General **den Beer Poortugael** wonders whether it would be possible to waive the right absolutely to use any invention which might come up. This would be very difficult, for a new invention may effect savings, instead of causing new expenses. In case of an international understanding, the Netherlands would very willingly join in.

Colonel **Gilinsky** makes known a proposition according to which the Imperial Government, deeming that the gun now in use in all armies is of about the same caliber and quality, proposes the fixing of a term, to be determined upon, during which the guns now in service shall not be replaced by others. Automatic guns exist at present only as a proposition and have not been adopted anywhere. It is not a question of defending new inventions, but of fixing for a certain time the present type without precluding improvements which would not radically change them and which would not transform the present gun into an automatic gun.

The object of this proposition is to prevent new expenses.

Captain **Ayres d'Ornellas** asks whether this prohibition has in view only the guns and cannon in use, or whether it applies likewise to firearms which are in progress of adoption.

The **President** supposes that nations which are behindhand could come up to date with the others.

According to Colonel **Gilinsky** the gun is about the same in all the armies. The improvement of the present type is permitted, the only thing under consideration at present being the gun itself.

Captain **Ayres d'Ornellas** defines the question. It is true that the gun is about the same in the different European armies, but the caliber differs, ranging between six and eight millimeters.

The **President** asks whether it would not be suitable to present a precise formula as to the minimum caliber.

General **den Beer Poortugael** proposes that the types of guns remain the same and that calibers 6, 7, and 8 be accepted as limits.

In the general discussion of the second proposition of the Russian circular, Captain **Crozier** declares that the suggestion to prohibit the use of more powerful powders than those at present adopted might run counter to one of the principal objects of the Russian proposition. Suppose that by a more powerful powder we mean a powder which imparts a greater velocity to a projectile of a given weight or the same velocity to a heavier projectile,—it is known that a powder is powerful in proportion to the production of the volume of gas furnished by the temperature of the combustion. Now, it might very well be supposed possible to produce a powder which, by furnishing a greater volume of gas at a lower temperature of combustion, might be more powerful than any powder now in use

and which at the same time, by reason of the low temperature, would strain [43] the gun less, which would enable the latter to be kept in service for a longer time. To forbid the use of such a powder would, by preventing the saving to be effected thereby, hinder the beneficent object of a reduction of military expenses. These remarks apply not only to the gun, but are made in obedience to a suggestion of the president that it would be well to expatiate first on the more simple questions, while reserving the more difficult ones for subsequent discussions.

Colonel **Künzli** asks whether it would not be well to prohibit projectiles which aggravate wounds and increase the sufferings of the wounded. He adds that he has the so-called "dum dum" bullets in view.

At the request of the **PRESIDENT**, Mr. **KÜNZLI** will bring a formula to the next meeting.

Mr. **den Beer Poortugael** favors the prohibition of inhumane projectiles which produce incurable wounds. The dum dum bullets, the point of which is very soft, the casing of the projectile being very hard, and the interior being formed of a softer substance, burst in the body; the entrance is thin and the exit enormous. These ravages are not necessary; it is sufficient to render an armed man unable to serve for a time, and it is useless to mutilate him.

The Dutch Government authorized the General to ask the absolute prohibition of the use of dum dum bullets and similar projectiles.

The **President** observes that the proposition of the Dutch Government is but an extension of the principle endorsed at St. Petersburg in 1868.

General Sir **John Ardagh** says there must be a misunderstanding, as the dum dum bullets do not entail the consequences attributed to them, being bullets like other ones—ordinary projectiles.

The **President** observes that there ought to be concrete formulas in order to approach practically the various aspects of the problem.

There is established an exchange of views on the proposition formulated by Colonel **GILINSKY**, during the course of which the following declarations were obtained:

## GERMANY

The question will be very difficult to settle; we are ready to take part in the discussion and to take everything *ad referendum*, but we have no proposition to present.

## UNITED STATES OF AMERICA

In regard to the question of agreement not to adopt new small arms for a term of years, Captain CROZIER stated that the Government of the United States did not desire to limit itself in regard to the case of new inventions having for object the increase of efficiency of military weapons, although there is at present no question of change of small arms.

## AUSTRIA-HUNGARY

I can accept the discussion only *ad referendum*, as the delegate from Germany has done. However, I believe that the Austro-Hungarian delegation could agree to the proposition not to change the present gun for some time; but it would seem to be very difficult to determine what that *present gun* is. As a matter of fact, if permission is given to improve the gun, it must be remarked that even a very slight improvement may entirely change the character of a weapon. It will therefore be very difficult to set limits in this matter. It would be necessary, furthermore, to know whether, as was mentioned by the delegate from Portugal, a gun under study can be considered as a present gun. Finally, I repeat that I can not accept the decisions to be reached otherwise than *ad referendum*.

## BELGIUM

COUNT DE GRELLE ROGIER declares that he can accept the formula of General DEN BEER POORTUGAEL as regards the choice between calibers 6, 7, or 8 of the gun.

## DENMARK

I have no special instructions from my Government; in my personal opinion Denmark will not change her present gun for ten years, but we ought to have the freedom of improving the ammunition, etc.

## SPAIN

Spain agrees on principle with the opinion expressed by the Austrian delegate and can accept the proposition of Colonel GILINSKY, of course only in regard to the gun.

[44]

## FRANCE

The French delegate asks that a very precise form of wording determine, if possible, the limits of the modifications, improvements, or transformations both of the guns and ammunition, which should not be separated.



## GREAT BRITAIN

Sir JOHN ARDAGH declares that he has no proposition to submit on the question of restriction applied to guns and that he will accept the decision of the subcommission *ad referendum*.

## ITALY

General ZUCCARI observes that the question laid down by Russia presupposes that the guns of the several nations differ very little. Other delegates have already observed that this difference is not so slight; as a matter of fact it is considerable. General ZUCCARI would be willing to agree to the French and Austrian proposition; but it would be very difficult to come to an understanding without first determining the principal data with regard to the weapon—the standard model of gun.

## JAPAN

The Japanese delegation is ready to accept *ad referendum* the decisions of the Commission provided a clear and precise formula can be presented on the question under discussion, as was maintained by the Austrian, French, and Italian delegates.

## NETHERLANDS

The Netherland Government can accept the proposition of the Russian Government with regard to rifles.

## PERSIA

Persia, being convinced that the Russian propositions are entirely humane, fully shares the opinion and supports the proposition of the Russian Government to decide on a system of gun for five or six years as a trial.

## PORTUGAL

*Ad referendum.*

Portugal adheres to the opinion expressed by Austria-Hungary, backed by France and Italy, that is, that it will be necessary to make a very precise statement of the technical data of the gun which are not to be changed during a certain period.

## ROUMANIA

The Government of His Majesty the King of Roumania is very favorable to the Russian proposition, the purpose of which is to maintain, by virtue of an international understanding and for a certain number of years, the types of improved guns now in use in most of the European armies, in order to put a stop to the disastrous competition which is going on owing to the periodic and frequent renewal of the guns in the various nations.

The Royal Government would therefore agree to a precise and practical

solution calculated to satisfy the idea expressed by Colonel GILINSKY on behalf of the Imperial Government.

Meanwhile, I can take only *ad referendum* the idea expressed in regard to the gun question.

#### RUSSIA

Fixing of a period of ten or five years during which the guns now in service shall not be replaced by any other models. It is agreed that the automatic gun exists at present only as a proposition and is not yet adopted anywhere. The improvement of the models now in service is permitted on condition that the fundamental type shall not be changed.

[45]

#### SERBIA

The delegate from Serbia declares that Serbia, still possessing at the present time a system of gun which is obsolete, is about to replace it by a modern model, and can not on its part accept the proposition of the Russian delegate.

#### SIAM

On behalf of the Siamese Government, PHYA SURIYA fully adheres to the proposition made by Colonel GILINSKY on behalf of the Russian Government, to decide that, for a certain number of years to be determined, the guns at present in use in each nation shall not be changed.

#### SWEDEN AND NORWAY

I join *ad referendum* in the opinion just expressed by the representative from Austria-Hungary as regards the gun.

#### SWITZERLAND

The delegate from Switzerland takes the question *ad referendum*. He believes that the Government will give its adhesion to an agreement concerning the gun if a precise and clear wording is found.

#### TURKEY

ABDULLAH PASHA, finding no limit to the improvement of guns, makes the same reservations as the Austrian delegate.

#### BULGARIA

Setting of a period of five to ten years during which the guns now in use should not be replaced by other models.

Improvements in the models now in service would be permitted provided the fundamental type were not changed.

It is agreed that automatic guns exist at present only as a proposition.

The **President** calls attention to the extreme difficulty of reaching any result unless a clear and precise form of wording is proposed. The sense of the Russian

formula seems to be as follows: prohibition of new firearms, each one remaining free to adopt the guns now in use.

For the next meeting we must have clear and precise formulas, in order to see whether we can reach an understanding on the conventional restrictions to be placed during five years on the type of gun and what modifications should be permitted in regard to ammunition; finally, the question presents itself likewise in regard to cannon. Should a minimum caliber, weight of projectile, and initial velocity be fixed? Should the number of shots per minute be restricted? Should the St. Petersburg Convention be extended to explosive or flattening bullets? Should automatic loading be excluded?

The meeting adjourns.

## SECOND MEETING

MAY 29, 1899

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His Excellency Mr. **Beernaert** presiding.

Mr. **Raffalovich** calls the attention of his colleagues to the absolute necessity of observing the fullest secrecy in regard to the communications given and the documents distributed.

Colonel Count **Barantzew** reads the following Russian propositions :

[46] *Russian propositions for the modification, improvement or transformation which may be made in guns within a period of time to be discussed*

1. The minimum weight of the gun shall be 4 kg.
2. The minimum caliber shall be  $6\frac{1}{2}$  mm.
3. The weight of the bullet shall not be less than  $10\frac{1}{2}$  grams.
4. The initial velocity shall not exceed 720 meters.
5. The rapidity of fire shall be kept at 25 shots per minute.
6. It is understood that explosive or expansive bullets, as well as automatic loading, are prohibited.

General **den Beer Poortugael** communicates the text which he prepared with the authorization of the Dutch Government.

The nations agree not to use in their armies or fleets, during five years from the date of signature of the present documents, any other guns than those now in use or under consideration.

With respect to guns under consideration, only those of an existing type and of a caliber ranging between 6 and 8 mm. shall be allowed.

The improvements allowed shall be of such a nature as not to change the type, caliber, or initial velocity now prevailing.

The **President** opens up the discussion.

Colonel Count **Barantzew** says he has been authorized to submit to the sub-commission the propositions which he made at this meeting, but Russia would have preferred that the original proposition be adhered to. It is out of deference to the desire expressed by the assembly that he brings a new text.

Colonel **Gilinsky** observes that the fundamental idea expressed in the circular of August 12, 1898, is that of a possible reduction of the excessive armaments which are weighing on the nations ; it is in order to mitigate the burden imposed on the taxpayers that the Russian Government has proposed that each nation preserve its present gun and avoid the new expenses incident to a change ; the second formula effects no change in the sense of the first.

General **den Beer Poortugael** adheres to the idea of Colonel **GILINSKY**.

He deemed it necessary to propose a clause which might be accepted while remaining within the most general terms and while avoiding more precise details. This would permit small improvements without modifying the type in use. It will be all the easier to agree on the gun since most of the nations now have an arm with which they may be satisfied and which is of an analogous type.

The **President** points out that the dominating idea is the same in both Russian and Dutch propositions. Only the first specifies more fully, while the latter is more general in this way, that it does not speak of the caliber, initial velocity, weight of bullet, etc.

At the request of Mr. **Beldiman**, delegate from Roumania, it is decided that the text of the two propositions shall be printed and that the assembly shall give its opinion at the next meeting.

Colonel **Gilinsky** reads the proposition of the Russian Government in regard to bullets:

The use of bullets whose envelope does not entirely cover the core at the point, or is pierced with incisions, and, in general, the use of bullets which expand or flatten easily in the human body, should be prohibited, since they do not conform to the spirit of the Declaration of St. Petersburg of 1868.

Colonel **GILINSKY** adds that there exists a new projectile the front part of which is hollowed out, so that there is, at the point of the bullet, an empty space between the core and the casing.

Colonel **Künzli** proposes the following text:

Prohibition of infantry projectiles such as have the point of the casing perforated or filed, and whose direct passage through the body is prevented by an empty interior or by the use of soft lead.

The object which he has in view is to diminish the useless suffering of wounded persons, the purpose of war being to put men out of action for a certain length of time and not to mutilate them.

The **President** asks the opinions of the delegations present.

The delegate from Germany, Colonel **Gross von Schwarzhoff**, would prefer the Russian formula as being the more precise. The German Government would, of course, offer no objection, but Mr. **GROSS VON SCHWARZHOFF** takes the question *ad referendum*.

The delegate from the United States, Captain **Crozier**, thinks his Government will endorse the ideas of Colonel **GILINSKY**.

[47] The delegate from Austria-Hungary, Lieutenant Colonel **von Khuepach**, accepts the Russian proposition.

The delegate from Denmark, Colonel **von Schnack**, accepts the Russian proposition.

The delegate from Spain, Count **de Serrallo**, likewise.

The delegate from France, General **Mounier**, accepts. However, he asks that the wording be modified in order to avoid the difficulties connected with too precise a definition, which might be evaded by reason of subsequent inventions. He proposes that we confine ourselves to the use of the term "expansive bullet."

The delegate from Great Britain, General Sir **John Ardagh**, accepts the Russian proposition *ad referendum*.

The delegate from Japan, Mr. **Motono**, accepts the Russian proposition.

The delegate from Italy, General **Zuccari**, while accepting the Russian proposition as a principle endorses the observations of General **MOUNIER**.

The delegate from the Netherlands, General **den Beer Poortugael**, accepts the Russian proposition with the **MOUNIER** amendment.

The delegate from Persia, General **Mirza Riza Khan**, accepts the Russian proposition.

The delegate from Portugal, Captain **Ayres d'Ornellas**, endorses the Russian proposition with the **MOUNIER** amendment.

The delegate from Roumania, Mr. **Beldiman**, thinks his Government will accept the Russian proposition as amended by General **MOUNIER**.

The delegate from Serbia, Colonel **Maschine**, accepts it *ad referendum*.

The delegate from Siam, Mr. **Phya Suriya**, accepts the Russian proposition.

The delegate from Sweden and Norway, Colonel **Brändström**, accepts the **GILINSKY-MOUNIER** proposition.

The delegate from Switzerland, Colonel **Künzli**, after withdrawing his text, accepts the **GILINSKY-MOUNIER** proposition.

The delegate from Turkey, General **Abdullah Pasha**, accepts the Russian proposition.

The delegate from Bulgaria, Major **Hessaptchieff**, accepts the **GILINSKY-MOUNIER** proposition.

General **Mounier** suggests the following wording: "The use of expansive or dilatable bullets is prohibited."

Colonel **Coanda** observes that soft bullets, without casing, become dilatable through their mechanical effect. He proposes to mention in the text "non-explosive bullets" with a hard casing covering the whole bullet.

On the proposition of Colonel Count **Barantzew**, the subcommission instructs the Russian, French, and Roumanian delegates to submit a final text to him by the next meeting.

On the proposition of the **President**, the subcommission takes up the question of the cannon.

The **PRESIDENT** asks whether they are in favor of stopping, for a certain period of time to be determined, at the present types and of forbidding themselves by convention to make any improvement.

Colonel **Gilinsky** recalls that the object of the Russian propositions is to reduce the burden which is weighing down on the peoples; it would be desirable to arrive, as regards field ordnance, at an understanding similar to that suggested for small arms; that is, that the present cannon should not be changed, namely, the new rapid fire guns now existing in several armies, allowing countries which are behindhand to catch up with the others.

Following an observation by General **ZUCCARI**, the **President** asks whether it is agreed that countries which are behindhand shall at all events be allowed to improve their armament in order to bring it up to the level of countries which are now the farthest advanced.

Mr. **Bihourd** remarks that this way of putting it might induce greater expenditure by serving as an incitement to improve the present equipment; it would thus be contrary to the economic purpose pursued in the limitation of armaments.

The **President** calls for a vote on the question whether it is understood

that in case new improvements were prohibited conventionally this prohibition would nevertheless allow all to adopt the most improved types now in use. Thus, the most backward nations could place themselves on a level with the most advanced ones. The delegates who are in favor of this will vote yea, the others nay.

The delegate from Germany says it is difficult to vote owing to the restrictions imposed.

The delegates from the United States of America vote yea.

The delegate from Austria-Hungary, after stating that his country is to change its cannon, sides with the delegate from Germany.

The delegate from Belgium votes yea.

[48] The delegate from Denmark, after declaring that his country is to change its equipment, says that it would be necessary to try the best types, but that the nations which possess them will not let them be known. It would be necessary to state exactly what is admissible and what is not.

The delegate from Spain states that his country is also going to change its equipment, and joins in the opinion of Denmark.

The delegate from France cannot answer either yea or nay; Denmark seems to have given the proper opinion. General MOUNIER does not know the best situation; there is a secret here to everybody.

The delegate from Great Britain says that his Government is not disposed to accept the limitation concerning cannon.

The delegate from Italy votes yea.

The delegate from Japan is of the same opinion as the delegate from Denmark.

The delegate from the Netherlands is of the opinion of Colonel GROSS VON SCHWARZHOFF.

The delegate from Persia sides with the Russian proposition.

The delegate from Portugal votes like Denmark.

The delegate from Roumania observes that it is impossible to treat the question of cannon like that of small arms, and he sides with the opinion of General MOUNIER.

The delegate from Russia recalls the fact that he has already pointed out the difference between the question of the gun and that of the cannon. In the case of the gun, the Great Powers are in possession of very satisfactory types which are much alike. This is not the case with the cannon.

Colonel Gilinsky says the Russian proposition tends to the acceptance of the best cannon, that is, the rapid-fire cannon.

The delegate from Serbia votes yea.

The delegate from Siam votes yea.

The delegate from Sweden and Norway announces that in his country the replacement of the ancient cannons has been decided upon. Under these circumstances, he must reserve his vote.

The delegate from Switzerland says that the most advanced countries in the way of ordnance are France and Germany. The rest are in an experimental stage. He will not vote.

The delegate from Turkey makes reservations.

The delegate from Bulgaria asks whether a more improved type of small

arms is to be adopted, and whether backward nations will be allowed to choose the best types for their armament.

Under this reservation he joins in the proposition of Colonel GILINSKY.

In consequence of this vote the **President** thinks he ought to lay down the question as to the principle involved. Should the nations represented at the Conference prohibit themselves, for a certain period of time to be determined, and especially for purposes of economy, from modifying their ordnance equipment, precluding the use of any new invention, each thus preserving full freedom of action?

He asks the opinion of the delegates:

Germany, the United States, and Austria-Hungary, nay; Belgium abstains from voting; Denmark, Spain, France, Great Britain, Italy, Japan, the Netherlands, Portugal, Persia, and Roumania, nay; Russia abstains from voting (the delegate from Russia observes that the prohibition would apply only to the most advanced countries, the others having the freedom to choose the best type); Serbia, Siam, Sweden and Norway, Switzerland, Turkey, and Bulgaria, nay.

The **President** states that a very large majority is hostile to any limitation as regards cannon and that on this point likewise there is no use for discussion.

He asks whether there is any limitation to be made in regard to powders.

On this question the delegates present are unanimously in favor of preserving freedom of action for each nation as regards the use of new loading powders.

Colonel **Gilinsky** says Russia proposes not to use, for field artillery, high-explosive shells (*obus brisants ou à fougasses*) and to limit itself to the existing explosives without having recourse to the formidable explosives employed for sieges.

Colonel **Gross von Schwarzhoff** asks whether the use of the very powerful explosives which have been adopted in some armies will be forbidden.

The **President** says that such is really the scope of the proposition of Colonel GILINSKY.

To the question whether high-explosive shells shall be prohibited in field warfare, ten nations (Belgium, Denmark, Netherlands, Persia, Portugal, Serbia, Russia, Siam, Switzerland, and Bulgaria) answer yea.

Eleven nations (Germany, United States, Austria-Hungary, France, Spain, Great Britain, Italy, Japan, Roumania, Sweden and Norway, and Turkey) vote nay.

To the question whether new explosives not yet used should be prohibited, nine nations (Belgium, Netherlands, Persia, Portugal, Russia, Serbia, Siam, Switzerland, and Bulgaria) voted yea.

[49] Twelve nations (Germany, United States, Austria-Hungary, Denmark, Spain, France, Great Britain, Italy, Japan, Roumania, Sweden and Norway, and Turkey) voted nay.

The **President** places the second part of theme No. 3 under discussion, viz: Prohibition of the discharge of projectiles or explosives of any kind from balloons or by similar methods.

General **den Beer Poortugael** reads the following declaration:

The Government of the Netherlands has authorized me to support this proposition.



Does it not seem excessive to authorize the use of infernal machines which seem to fall from the sky?

I know well that when one is obliged to wage war one must wage it as energetically as possible, but this does not imply that all means are permissible.

At the Brussels Conference in 1874 it was decided, in Article 12 (which approximately agrees with Article 11 of the Russian preliminary draft), that the laws of war do not recognize belligerents as having an unlimited power as to the choice of means of injuring the enemy, and in Article 13 of the final protocol of that Conference, among others, the following things are notably forbidden in accordance with this principle: (a) the use of poison or poisoned weapons; (b) the murder, by treachery, of individuals belonging to the hostile nation or army. Now, the progress of science, and of chemistry in particular, is such that things which were but yesterday most incredible may be realized to-day. We may foresee the use of projectiles or other things filled with deleterious or soporific gases and hurled from balloons among troops, placing them at once *hors de combat*.

General DEN BEER POORTUGAEL wishes to scrupulously eliminate every means which resembles perfidy, and he endorses the Russian proposition.

Colonel **Gross von Schwarzhoff** says it is necessary to state in voting for the proposition it is not desired to prohibit the use of mortars or other high-firing guns, but that the words "similar methods" apply solely to *new* methods not yet invented and analogous to the use of balloons. Finally, a declaration must be made as to whether the prohibition, once voted for and accepted by the Governments, shall remain in force forever or only for a period of time to be determined, for instance, for a period of five years, as was proposed for small arms.

The subcommission, in accordance with the interpretation of the delegate from Germany, adds, in order to remove any misunderstanding, the word "new" between the words "methods" and "similar."

Colonel **Gilinsky** says that in the opinion of the Russian Government the present different ways of injuring the enemy are sufficient.

On this question, with the exception of the delegate from Great Britain and with the reservation of the delegate from Roumania to limit the understanding for five years, the subcommission gives a unanimous vote.

The meeting adjourns.

## THIRD MEETING

MAY 31, 1899

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His Excellency Mr. **Beernaert** presiding.

The minutes of the previous meeting are now read.

Captain **Crozier** observes that he thought he was voting on the status of the question and not on its merits when he gave an affirmative vote regarding the prohibition of backward nations to improve their field artillery. He would have voted nay on the merits.

After this rectification, the minutes are adopted.

The **President** now reads the draft relating to bullets as adopted by the delegates from France, Roumania and Russia.

The use of bullets which expand or flatten easily when penetrating the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions, should be prohibited.

[50] Lieutenant Colonel **von Khuepach** says that in his opinion they ought to confine themselves to proposing a provision embodying a conventional restriction of the use of bullets which produce unnecessarily cruel wounds, without entering into details, especially as it would be impossible to entirely avoid mutilations; for a bullet constructed in any manner will cause such mutilations if it should be deformed by striking on a rock or other hard object before striking the human body.

General Sir **John Ardagh** agrees with the Austrian delegate, but he asks to add a few words regarding war against savages. Quite a large number of nations are interested in this question.

In civilized war a soldier penetrated by a small projectile is wounded, withdraws to the ambulance, and does not advance any further. It is very different with a savage. Even though pierced two or three times, he does not cease to march forward, does not call upon the hospital attendants, but continues on, and before anyone has time to explain to him that he is flagrantly violating the decisions of the Hague Conference, he cuts off your head.

It is for this reason that the English delegate demands the liberty to use projectiles of sufficient efficacy against savage populations, and he endorses the Austrian draft.

Mr. **Raffalovich** believes that the ideas set forth by Sir **JOHN ARDAGH** are contrary to the humanitarian spirit which dominates this end of the nineteenth century. It is impermissible to make a distinction between a savage and a civilized enemy; both are men who deserve the same treatment.

Moreover, to have two kinds of projectiles, one for savages and the other for civilized peoples would be complicating the armament. It is possible to

contemplate the case of soldiers stationed outside of Europe and armed with bullets for use against savages, who would be called upon to fight against the regular troops of a civilized nation.

They would then have to have two kinds of cartridge belts.

Colonel **Gilinsky** says that the small-caliber bullet will not stop the attack of savages merely because they are savages; neither will it stop the attack of a civilized army, this being the effect of very small caliber. In fact, a severely wounded man can continue to advance for some time, and even fight, so that this is an argument in favor of bigger calibers. The Russian 7½ mm. caliber as well as the MAUSER stop an attack very well. By constantly diminishing the caliber too small a caliber is reached, and hence the necessity perhaps of using the dumdum bullet. As to savages, they are of course not guaranteed against the use even of explosive bullets. In the St. Petersburg Declaration of 1868, the contracting Powers decided not to employ these bullets in wars among themselves. It is evident that there is a gap in the St. Petersburg Declaration, a gap which enables not only dumdum bullets but even explosive bullets to be used against savages.

His Excellency **Abdullah Pasha** states that experiments on all kinds of animals at which he has been present have shown the same result with the small as with the large-caliber bullets.

On the invitation of the **PRESIDENT**, Lieutenant Colonel **von Khuepach** frames his proposition as follows:

The use of bullets which cause uselessly cruel wounds shall be prohibited by convention.

Before submitting the two propositions under consideration to a vote, the **President** thinks he is expressing the opinion of the assembly by saying that no distinction should be made between those against whom the fighting is done.

Mr. **Raffalovich** asks that priority be given to the wording of General **Mounier**.

The **President** proceeds to have a vote taken on this formula, the result being as follows:

Nineteen nations decide in the affirmative, as follows: Germany, United States, Belgium, Denmark, Spain, France, Italy, Japan, Netherlands, Persia, Portugal, Roumania, Russia, Serbia, Siam, Sweden and Norway, Switzerland, Turkey, and Bulgaria; one nation (Great Britain) votes in the negative; and one nation (Austria-Hungary) abstains from voting.

The subcommission now takes up the question of small arms.

General **Mounier** declares that he has asked instructions regarding the text of the Russian propositions. Not having received them as yet, he is obliged to reserve his answer.

Colonel Count **Barantzew** explains that the dominating idea of the Russian propositions is to retrench military expenditures by reaching an understanding in fixing the type of small arm now in use, while allowing backward countries to complete their armament. The Russian delegate would like to have a return made to the original Russian proposition, for the very preciseness of the details contained in the second proposition drawn up in reply to the desire expressed by the subcommission would perhaps necessitate some parleying which would have little chance of leading to any result.

[51] General **den Beer Poortugael** after stating that he agrees with Colonel

Count BARANTZEW, explains that it is for the same reason that he presented a draft couched in more general words.

After an exchange of views among several of the delegates, the **President** announces that he has just had communicated to him a text which is more or less analogous to the Russian (GILINSKY) proposition; and in order to enable the technical delegates to reach an understanding he suspends the meeting.

Upon the meeting being resumed, the following text proposed by General **den Beer Poortugael** and accepted by Colonel GILINSKY is put to a vote:

The nations agree to use in their armies, for five years from the date on which the present act is signed, only the guns (small arms) in use at the present time.

The improvements permitted shall be of such a nature as not to change either the existing type or caliber.

Colonel **Gross von Schwarzhoff** does not think the proposition can be accepted, for it enables the improvement of existing guns without giving a clear and precise definition of the latter. It would be very difficult to determine what improvements could be adopted without constituting as a whole a new type of gun. What changes should be permitted? Where is the authority who would decide these questions? In case of doubt it would be necessary, in order honestly to carry out the clauses of the Convention, to make the new model known to the other Powers and ask them for their consent before adopting it. As this is hardly possible, he regrets to have to vote against the proposition.

It is the same with the United States, Austria-Hungary, France, Great Britain, Italy, Japan, Portugal, Serbia, and Turkey.

The following voted for the proposition: the delegates from Denmark, Spain, Netherlands, Persia, Russia, Siam, Sweden and Norway, Switzerland, and Bulgaria, the latter however with reservations.

Major **Hessaphtchieff** says that the Bulgarian delegation understands the proposition of the delegate from the Netherlands as follows: Each Power whose armament is inferior to that of another, shall always have the right to supersede its gun by the most perfected model now in service in the most advanced country from the standpoint of armament.

It is already an inalterable and even alphabetical principle in the military art to never have a small arm which is inferior to that used by a neighboring country.

Consequently, in order that the proposition of the delegate from the Netherlands may be practically applied, it would have to be admitted that the advantages and ballistical data of the most perfected gun now in use should not be exceeded by any of the Powers.

It is only under this condition that the Bulgarian delegation will accept *ad referendum* the proposition of the delegates from the Netherlands.

The **Delegate** from Roumania, referring to his declaration of May 26, reserves his decision and abstains from voting.

(Nine yeas, one yea with reservation, ten nays, and one abstention.)

The **President** thereupon puts to a vote the BARANTZEW text, with reservation in regard to the final paragraph.

Colonel **Gross von Schwarzhoff**, while doing homage to the skill with which Count BARANTZEW tried to remove the obstacles in the way of a general understanding, fears that all the difficulties are not yet overcome.

We all wish to make savings or at least to avoid heavy expenditures such as would be incident to the adoption of a new gun. But we can not renounce doing this unless we are quite certain that no Power will improve its armament beyond a certain measure.

The proposition enumerates what it is believed can be granted as a limit in the improvements permitted.

The delegate from Germany asks whether it is really useful and necessary to establish a minimum for the weight of the small arm.

Besides this economic question, we are pursuing humanitarian purposes.

Mr. GROSS VON SCHWARZHOFF believes that it is much more humane to lighten the weight which the soldier must carry than to fix a minimum for the weight of a part of his armament. It is true that everything that is taken away from the weight of the gun would doubtless soon be replaced by an increase of cartridges. Then it would be necessary to clearly explain whether it is a question of the weight of the gun alone, unloaded, or of the gun when loaded and provided with a bayonet. In the first the German delegate recalls to his military [52] colleagues that several guns now in use do not fulfil the condition imposed.

He believes these are the Belgian, Spanish, Italian, Norwegian, Roumanian, and German guns. Therefore, by prescribing a weight of 4 kg. we should be compelling the nations to make undesirable changes in their guns.

As to the weight of the bullet, there are likewise guns in use whose projectiles remain under the figure indicated. These are the Norwegian and Roumanian guns.

The delegate from Germany willingly grants that a velocity of 720 to 730 meters is not thus far exceeded and that it would be possible to stop at this figure; but the initial velocity depends at least as much on the powder used as on the system of the gun, the weight, and the form of the projectile. As the sub-commission a few days ago reserved the liberty for each to adopt new powders, it would seem logical not to fix the initial velocity. For otherwise it might easily be possible to invent a new and less costly powder, more durable and efficacious than the powder now in use, without being able to adopt it because it would increase the initial force beyond 720 meters.

It will therefore be necessary at the very first to reverse the unanimous decision reached at the meeting of May 29.

The rapidity of fire depends no less on the skill and training of the firer than on the mechanism of the gun. In prescribing a maximum, it will therefore be necessary to state whether it is an average rapidity which the average soldier shall be permitted to attain or a rapidity which the best trained men shall not exceed.

He believes he has demonstrated that certain conditions do not sufficiently take into account the present status of armament, that others ought, if possible to be defined with more precision, and that a condition in regard to initial velocity would amount to annulment of the previous vote. All these reasons compel him, to his great regret, to vote against the proposition. He wishes to add that he has expressed only his personal opinion; if the delegates do not indorse this view and if they agree on this proposition or on another formula, the German Government will without doubt be quite ready to examine it.

The delegate from the United States votes nay.

The delegate from Austria-Hungary believes that it is impossible to settle the question by means of an affirmative or negative vote. As he already had the

honor to state at the meeting of May 26, Austria-Hungary, possessing a satisfactory type, has no reason for changing her present type of gun, at least as long as it is not inferior to that of other Powers.

For this reason the delegate could accept the proposition of a restriction by way of convention; but this provided it settles only the question as a matter of principle.

Details would, in his opinion, constitute an obstacle to any convention.

As to the initial velocity, he has nothing to add to what has just been said by Colonel GROSS VON SCHWARZHOFF, and he endorses it fully.

As to the other points, he thinks it would first be necessary for the competent authorities of all the countries represented to reach an understanding on the possible limits before rendering them obligatory. This was the procedure followed in the revision of the Geneva Convention. Therefore, to his regret, he will have to vote nay.

The following also voted nay: United States, Belgium, Denmark, Spain, Italy, Japan, Portugal, Serbia, Siam, Switzerland and Turkey.

The following voted yea: Netherlands, Persia, Russia, and Bulgaria, the latter *ad referendum*.

The delegate from France declares that he is awaiting instructions.

The delegate from Roumania abstains from voting, and maintains his declaration made on the subject at the meeting of May 26; inasmuch as, in his opinion, the question has remained in exactly the same state since that day, he does not deem it necessary to vote either in the affirmative or negative.

Mr. Raffalovich asks that it be stated that the second Russian draft was submitted to the assembly in response to the desire expressed by the latter to have the data of the weapon more accurately specified. The first proposition faithfully represented the idea of the Russian Government, namely, to limit the expenditures by fixing the present armament.

An exchange of views takes place on paragraph 6 of the BARANTZEW text.

The President remarks that the prohibition embodied in the St. Petersburg Declaration is limited and that the assembly will surely be in favor of generalizing it. (*Assent*.)

Following a short discussion, it is agreed to add the word *explosive* to the definition of the bullet whose use is prohibited (see above the proposition of General MOUNIER, which was voted on and which reads thus in its final text:)

[53] The use of explosive bullets and of those which expand or flatten easily on penetrating the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions, shall be prohibited.

After a few explanations concerning the definition of automatic loading, the question of the conventional prohibition of this system is put to a vote.

The delegates voted as follows: Nine in the affirmative (Belgium, Denmark, Spain, Netherlands, Persia, Russia, Siam, Switzerland, and Bulgaria); six in the negative (Germany, United States, Austria-Hungary, Great Britain, Italy, and Sweden and Norway.)

The following refrained from voting: France, Japan, Portugal, Roumania, Serbia and Turkey.

The President remarks that it has been a question thus far only of the

modes of destruction by means of firearms and new explosives, and that science might borrow others, for instance chemistry and electricity.

The circular of Count MOURAVIEFF does not explain itself directly on this point, but this is certainly its spirit. He asks whether the subcommission thinks it can declare itself competent on this subject or whether it intends to reserve the decision of the question for the First Commission or the plenary Conference.

The assembly decides in favor of the latter plan. The subcommission appoints as reporter General DEN BEER POORTUGAEL.

The meeting adjourns.

## FOURTH MEETING

JUNE 7, 1899

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His Excellency Mr. **Beernaert** presiding.

The minutes of the preceding meeting are read and adopted.

The **President** states that General **DEN BEER POORTUGAL** has made further attempts to reach an understanding as to the small arms. He has substituted the following wording instead of the text first distributed :

For a period of five years from the date of the present act, the nations agree not to replace the guns now in use in their armies by guns of any other type.

However, they do not forbid themselves making any improvement or perfection in the guns now in use which may appear advantageous to them.

The nations which have a gun of an antiquated model, that is, of a caliber above 8 mm. or having a magazine, may adopt existing models.

General **den Beer Poortugael** delivers the following address :

Under ordinary circumstances I should certainly have entertained scruples, after the debates and decisions of this high assembly, about offering a new proposition on the subject of small arms. But as the task which we have to pursue is not an ordinary one, and as I am convinced, fellow delegates, that none of you is less imbued than I with the imperious duty incumbent upon us not to give up until we have settled the question submitted to us, I am afraid that I would offend you should I ask to be excused for involuntarily causing you pain. I therefore prefer to enter on the subject at once and explain to you why I deemed it my duty to submit to you the proposition which you have in your hands.

My conscience tells me that we ought to do everything possible to reach an agreement on the question of small arms. Of all the questions indicated in the first four points of the **MOURAVIEFF** circular, and which the First Commission is assigned the mission of solving, the question of the small arm is obviously the one whose solution offers the least difficulty. For you know that almost all the armies are in possession of good guns of the same type and calibers varying only between 6, 7, and 8 millimeters.

Gentlemen, it is my belief that, not only from an economic point of view, [54] but also from the point of view of statesmanship, which fortunately is the same for every State, it is necessary and even urgent that we should do something

Whole populations in every civilized land expect that of us ; it would be very sad to disappoint their hope.

They ask, they beseech that a stop shall be put to throwing millions, nearly billions, into the gulf of incessant changes, which are made so rapidly that sometimes the weapon is changed three or four times before it is used. They ask,



they beseech that a stop shall be put to the extravagant expenditures devoted to the implements of warfare, so that satisfaction can be given to the social needs which are growing more and more pressing and which, without money, must remain neglected. They ask, they beseech that we stop, if only for a time, and if only to take breath, in this frantic competition to hold the record for military inventions.

At the very least, let us try to agree on the question which lends itself most readily to agreement; to do otherwise would be to deceive the nations cruelly.

Let us discard all distrust, which is a bad counselor. Let us not forget that in this very question of muskets, Russia, which made the original proposition, is equipped at present with a musket of large caliber, that of 7.62 millimeters, while neighboring States, Sweden and Norway, and Roumania, have better muskets of a caliber of 6.5 millimeters. This, then, is an evident proof of disinterestedness—a sacrifice, if you will, laid on the altar of the common welfare.

Let us not forget that it is the generous thought of the young and august emperor of the largest empire in the world, who has revealed his desire for prolonged peace; that, in his journey in Palestine, another emperor, young, generous, and genial, at the head of the formidable Power of Germany, solemnly expressed on the classic soil which we Christians call the Holy Land, his firm desire of maintaining peace; and that, as all the world knows, the Emperor of Austria-Hungary, the illustrious sovereign who lately celebrated his jubilee in circumstances so sad, who lives only for the welfare of the peoples whom he governs, is animated by sentiments equally peaceful.

Let us not forget, either, as the honorable president of the Conference, Mr. STAAL, has said, that "the eagerness with which all the Powers have accepted the proposition contained in the Russian circulars is the most eloquent proof of their unanimity with peaceful ideas."

In this state of things why do we hesitate—we who have met here to give a body, so to speak, to these ideas,—why do we hesitate to do the minimum; that is to say, to agree that only for the short time of five years we will all keep the muskets that we have now, except that those States which have inferior muskets—those without magazine—may choose any existing type?

If, gentlemen, after all that has happened and is expected, this Conference, proudly announced and constituted, and unparalleled in history, accomplished nothing in the way of economies so ardently desired—if we place not a single restriction on the ruinous transformation of armaments, we shall forge weapons for the enemy common to all Governments, for those who wish to revolutionize the established order of the world and who will not hesitate to scatter among the people venomous germs and a doubt as to the sincerity of the Governments whom we represent.

Those false prophets who make war only upon each other will say to the people: "Come with us all you who are oppressed and who ask for bread and peace; we alone can give them to you." And the people will throw themselves into their arms and will become their prey.

It remains for me to justify the formula proposed.

Attack has been made, and to my mind justly, on the details (which were demanded, moreover) of the second Russian draft; they are not to be found in the one which is presented to you.

It has been said that it was going too far to consider as the present gun,

even the gun in process of study; in the present formula the stage of study is not to be found.

The delegates of those States which have old-fashioned firearms have voted against the preceding propositions, because they desire to have the option of changing their guns of ancient type. The present draft gives them every satisfaction in allowing them, as is just, to choose among the best guns in existence.

If it is asked what is the present gun, I answer that every State knows very well what is the best gun now in use. I believe at first that we might leave out improvements; but it has been observed and, I think, with reason, that that would be inadmissible; it has indeed happened that defects of mechanism have come to notice that rendered a gun dangerous for the marksman. That is why I propose that every improvement be allowed, because I recognize that it is [55] very difficult to lay down limits; this is, therefore, a clear and precise definition.

If it is asked how we can control the matter so that the permitted improvement or perfecting does not carry with it a change of type, I take the liberty of replying as did the president of the Brussels Conference, Baron JOMINI: "It would be a wrong to the contracting parties to imagine that they could have the intention of not abiding by their agreement."

Gentlemen, it is with nations as with individuals. FRANCIS I, defeated and made prisoner at Pavia by CHARLES V, wrote to his mother from the Château of Pizzeghettonne, these memorable words: "Madam, all is lost but honor."

He did not cease to be the great king, when he had regained all that he had lost, because honor still stayed with him. But far different would it be to forfeit an oath or an accepted agreement, for:

Honor is like an isle with a steep and landless shore.

When once it has been lost, it cannot be regained any more.

I am convinced, then, gentlemen, that to be sure that the Governments will evade neither the spirit nor the letter of the agreement, there is no better watchman than the nation's honor.

Let us believe it! (*Applause.*)

The **President** proposed to the subcommission that it decide to have the remarkable address of General **den Beer Poortugael** annexed in full to the minutes.

Mr. **Raffalovich** suggests that it be printed and distributed with the summary record in order to bring the General's address to the attention of the Governments represented. (*Assent.*)

Colonel **Gilinsky**, in the name of the Russian delegation, thanks General **DEN BEER POORTUGAEL** for the hearty support that he has brought to the proposal of his Government.

Colonel **Gross von Schwarzhoff** says, that as a simple technical delegate he is not in a position to follow General **DEN BEER POORTUGAEL** into the domain of statesmanship. He admits that after all the efforts made, it would be very desirable to arrive at an agreement; but he questions whether the proposal of the Dutch delegate is well suited to bring that about. The technical object is to realize economies or prevent new expenditures in the equipment of infantry; now, the formula of General **DEN BEER POORTUGAEL** permits all States to introduce improvements in their muskets, provided that they do not change their

type. One might foresee the case of a great Power effecting progress along this line; even with very restricted modifications, but costly ones, it would be possible to produce a weapon much superior to the existing musket and this would oblige the other Powers to keep pace with them.

As the delegate of the United States has said, there are improvements susceptible of bringing considerable expenditures in their train, and when these expenditures are made, the liberty of adopting the weapon that seems the best should be possessed at the very least.

Moreover, it is not known in advance whether the patterns actually in use would lend themselves to the changes which a State would be obliged to make in view of the improvements adopted elsewhere.

The period fixed at five years would probably produce a double expenditure; first for the improvements, and then for a new type of musket.

In voting the German delegate expresses his personal opinion; he has no instruction from his Government.

Dr. **Stancioff** says that the Bulgarian delegation, whose adhesion is certainly obtained for all propositions tending to lighten budget burdens, should, however, make its reservations in presence of the limit of eight millimeters, which General **DEN BEER POORTUGAEL** intends to impose on States having a musket of old pattern. Bulgaria, using a caliber of eight millimeters, would fear being kept to this caliber, whilst the other States whose present armament is inferior would have the option of adopting a smaller caliber; Major **HESSAPTCHIEFF**, second delegate of Bulgaria, would ask that every State should be able to change its musket in order to put itself, in respect to caliber, on the level with the best musket in use.

Mr. **Miyatovitch** is happy to be able to support the opinion so eloquently expressed by General **DEN BEER POORTUGAEL**; he accepts the draft proposed, suggesting, however, to add that the States that are backward in armament shall also have the option of improving their musket.

He does not insist on this amendment in view of the declaration of the president, that the first paragraph of the proposition of General **DEN BEER** [56] **POORTUGAEL** safeguards the rights of backward States in respect of the improvements that they may introduce into their new muskets.

General **den Beer Poortugael**, in response to the remarks of Colonel **GROSS VON SCHWARZHOFF**, says that, without doubt, it will be necessary to make some expenditures, if it is wished to bring changes into the model in use, but that these expenditures will never be so considerable as they would be if the type itself were being changed.

As to the question raised by Mr. **STANCIOFF**, the Dutch delegate declares that the limit of eight millimeters should be kept; besides, great States like France have the eight caliber, and Russia whose caliber is very near eight would not have made the proposal of keeping the musket which is in use if she considered it inferior.

Colonel **Gilinsky** believes that the Bulgarian musket is not inferior to that of other Powers.

General Sir **John Ardagh** presents some observations on the proposals of General **DEN BEER POORTUGAEL**.

He sees great difficulties in realizing through a convention the restrictions that the Dutch delegate desires to have placed. He inquires especially whether it would be contrary to the terms of the proposal of General **DEN BEER POORTU-**

GAEL to have manufactured in the State arsenals improved muskets and to keep them stored so as not to distribute them to the troops except in case of war.

Sir JOHN ARDAGH then points out another difficulty, that of control.

For these reasons he cannot give his adhesion to the text presented.

Mr. Raffalovich is of opinion that General DEN BEER POORTUGAEL has answered in advance the objection that Sir JOHN ARDAGH raises relative to control. Instead of furnishing a means of agreement, the question of control would risk creating insurmountable difficulties. It is not within the views of the Governments to raise this question. The guaranty of engagements taken resides in the good faith of the contracting parties, in the control of public opinion.

The President remarks that to have manufactured and to preserve in storage improved weapons for the purpose of using them in case of war would evidently be inconsistent with the sense of the proposition of the Dutch delegate.

Colonel Gilinsky declares that control is not necessary; it does not exist even in the case of commercial conventions.

According to Colonel Gross von Schwarzhoff, it is not a matter of control against bad faith; but he has in view difficulties that might arise in good faith in regard to the question of what were merely improvements in the weapon and what were radical transformations.

Who will decide the question whether there is a new type or an improvement?

The President proceeds to take a vote on the proposition of General DEN BEER POORTUGAEL.

Germany votes nay.

The delegate of the United States of America says that in his personal opinion his Government will make no objections, but, being without instructions, he abstains from voting.

The delegate of Austria-Hungary, awaiting instructions, likewise abstains. As to his personal opinion, he has several times had the honor to express it. In order not to repeat he limits himself to declaring that, not having general instructions on this subject, he has brought the proposition of General DEN BEER POORTUGAEL to the attention of his Government with a request to give him definite instructions on this point.

He should, therefore, abstain from voting until the time when he shall have received those instructions.

Denmark votes yea; Spain votes yea; France awaits instructions and abstains; Great Britain votes nay; Italy votes nay; Japan abstains, awaiting instructions; Netherlands votes yea; Persia votes yea; Portugal makes reservation; Roumania votes yea with reservation; Russia, Serbia, Siam and Sweden and Norway vote yea.

The delegate of Switzerland, after remarking that the deciding word would be pronounced by the Great Powers, thinks it useless to take a vote that is without useful bearing. For this reason he abstains.

Turkey, while awaiting instructions, abstains.

Bulgaria abstains *ad referendum*.

Consequently, two States have voted nay; nine States have voted yea; nine States have abstained.

Captain Crozier proposes to reopen the discussion on the prohibition of the discharge of projectiles from balloons.

Having voted affirmatively (he says) for the prohibition of the discharge [57] of projectiles or explosive material from balloons, or by similar methods, as

it appears in Article 3 of the circular of Count MOURAVIEFF of December 30, 1898, I would like to return to this vote and to examine the question anew.

I beg the indulgence of the assembly for speaking a few words in support of a motion which may seem radical in the presence of the almost unanimous vote already rendered.

The general spirit of the proposals that have received the favorable support of the subcommission is a spirit of tolerance with regard to methods tending to increase the efficacy of means of making war and a spirit of restriction with regard to methods which, without being necessary from the standpoint of efficiency, have seemed needlessly cruel. It has been decided not to impose any limit on the improvements of artillery, powders, explosive materials, muskets, while prohibiting the use of explosive or expanding bullets, discharging explosive material from balloons or by similar methods.

If we examine these decisions, it seems that, when we have not imposed the restriction, it is the *efficacy* that we have wished to safeguard, even at the risk of increasing suffering, were that indispensable.

Of the two cases where restrictions have been imposed, the first, the prohibition of making use of certain classes of bullets, proceeds exclusively from a humanitarian sentiment, and it is therefore reasonable to suppose that the second has its basis in such a sentiment. Now, it seems to me difficult to justify by a humanitarian motive the prohibition of the use of balloons for the hurling of projectiles or other explosive materials. We are without experience in the use of arms whose employment we propose to prohibit forever. Granting that practical means of using balloons can be invented, who can say that such an invention will not be of a kind to make its use possible at a critical point on the field of battle, at a critical moment of the conflict, under conditions so defined and concentrated that it would decide the victory and thus partake of the quality possessed by all perfected arms of localizing at important points the destruction of life and property and of sparing the sufferings of all who are not at the precise spot where the result is decided. Such use tends to diminish the evils of war and to support the humanitarian considerations which we have in view.

I do not know of machines thus efficient and thus humanitarian, in the incomplete stage of development in which aerostation now is; but is it desirable to shut the door to their possible introduction among the permitted arms? In doing so, would we not be acting entirely in the dark, and would we not run the risk of error inherent in such a manner of procedure? The balloon, as we know it now, is not dirigible; it can carry but little; it is capable of hurling, only on points exactly determined and over which it may pass by chance, indecisive quantities of explosives, which would fall, like useless hailstones, on both combatants and non-combatants alike. Under such conditions it is entirely suitable to forbid its use, but the prohibition should be temporary and not permanent. At a later stage of its development, if it be seen that its less desirable qualities still predominate, there will still be time to extend the prohibition; at present let us confine our action within the limits of our knowledge.

That is why I have the honor to propose the substitution of the following text for the text already voted:

For a period of five years from the date of the signature of this act it is forbidden to employ balloons or other similar means not yet known for the purpose of discharging projectiles or explosives.

The **President** observes that the vote taken in a preceding meeting is disposed of, and that it is before the plenary Commission that Mr. **CROZIER** should take up the question again.

Captain **Crozier** asks that his motion be made note of in the minutes.

His wish is granted.

The meeting adjourns.

## FIFTH MEETING

JUNE 22, 1899

His Excellency Mr. **Beernaert** presiding.

The minutes of the fourth meeting are read.

General Sir **John Ardagh** asks for a modification of his vote on the proposition of General **DEN BEER POORTUGAEL** concerning the musket question. In lieu of abstaining he votes negatively.

The **President** says that this is not a correction of the minutes but a change in the vote of the British delegation.

He supposes that there is no objection to its being stated in the minutes of to-day's meeting. (*Assent.*)

The minutes are approved.

The **President** remarks that the report of General **DEN BEER POORTUGAEL** was distributed several days ago in proof sheets and that there is therefore no reason for having it read; he confines himself to asking the delegates to indicate the corrections as to substance that they think should be made.

Colonel **Coanda** asks the insertion on page 3, 18th line from the foot, of the following: "General **MOUNIER** proposes simply the use of the term *expansive bullets*."

Colonel **COANDA** adds that in supporting the **MOUNIER** motion it should be specified that the bullets should be with a hard jacket covering the entire bullet.

Moreover, he would desire that the following declaration be added to the sixth line of page 6: "The delegate of Roumania abstained because in his opinion the question has remained exactly in the same stage since May 26, the date of his declaration."

He asks to substitute for the words: "abstains in default, etc." the following: "referring to his declaration of May 26, reserves his decision and abstains."

The **Delegate** of **Siam** asks suppression on page 3 of the words: "and **Siam** which answers affirmatively." He supports the opinion of the majority.

Major **Hessaptchieff** makes the following declaration:

In his report General **DEN BEER POORTUGAEL** stated the abstention of Bulgaria on the question of the musket; but having received since the last meeting the instructions of his Government concerning the proposition of General **DEN BEER POORTUGAEL**, the delegation has the honor to declare: that in consideration of the enthusiasm that all the Powers bring for the realization of the humanitarian intentions and magnanimous views of His Majesty the Emperor of Russia, and in order to affirm in like manner its own good-will, Bulgaria adheres fully and freely to the last proposition of General **DEN BEER POORTUGAEL**.

The **President** has record made of this declaration.

Colonel **Gilinsky** explains that the Russian proposition with respect to the question of field guns has been submitted to a vote in a form different from that which it originally had.

In short, the Imperial Government has proposed to accept the rapid-firing gun as the existing type and to forbid improvements for a determined time. He believes that the rapid-firing gun that exists in several armies is no longer a secret. It is adopted already in Russia, Germany, France, and it is being experimented with in other countries.

Colonel **Gilinsky** adds that the Russian proposition tends to permit the whole world to accept the best gun, that is to say, the rapid-firing gun. The proposition actually existing which has been voted upon, stipulates on the contrary that there should not be a change in the field artillery of the present gun and that the backward countries would have the option of placing themselves on a level with the others. He emphasizes the difference between the Russian proposition and the text put to vote, especially on the third vote; "to prohibit for a time to be determined modification of armament (cannon) while excluding the use of every new invention."

Under these circumstances he thought he should abstain.

The **President** says that this explanation of the Russian delegate will be inserted in the minutes.

He states then, that no other correction is requested and declares the report of General DEN BEER POORTUGAEL adopted. (*Assent.*)

He conveys the thanks of the subcommission to the reporter for his excellent work. (*Assent.*)

The meeting adjourns.



[59]

## SIXTH MEETING

JUNE 26, 1899

---

His Excellency Mr. **Beernaert** presiding.

On the proposal of the **PRESIDENT** the subcommission decides to entrust the examination of the propositions of Colonel **GILINSKY** concerning theme No. 1 of the **MOURAVIEFF** circular to a committee composed of Messrs. Colonel **GROSS VON SCHWARZHOFF**, General **MOUNIER**, Colonel **GILINSKY**, General Sir **JOHN ARDAGH**, Lieutenant Colonel **VON KHUEPACH**, General **ZUCCARI**, Captain **BRÄNDSTRÖM**, and Colonel **COANDA**, to which will be added Mr. **RAFFALOVICH**, delegate, as secretary.

The meeting adjourns.

## SECOND SUBCOMMISSION

### FIRST MEETING

MAY 26, 1899

---

**Jonkheer van Karnebeek** presiding.

**Jonkheer van Karnebeek** opens up the meeting and appeals to the indulgence of his colleagues, circumstances having called him to the presidency in spite of the fact that he does not possess any special knowledge in maritime matters.

He is of opinion that it would be useful to begin by naming a reporter, who could begin taking down notes right away without being prevented from taking part in the discussion.

The subcommission having endorsed this idea and having left the nomination of a reporter to its president, **Jonkheer van Karnebeek** asks whether Count **SOLTYK** would be willing to assume this office.

The subcommission applauds this choice.

Captain of Corvette Count **SOLTYK** accepts this appointment and asks his colleagues to lend him their kind assistance.

The **President** states that in view of the decision reached by the Commission in plenary session, the subcommission will in the first place have to examine whether it will be possible, as regards navies, to *prohibit* by means of a conventional arrangement the *putting into use of new firearms* (first part of theme 2 of the circular of December 30, 1898). As portable firearms are of comparatively little importance to navies, it will be necessary to take cannon particularly into consideration.

Admiral **Péphau** deems it very difficult to define the scope of this question. What is to be meant by "new firearms?" Is it a question also of prohibiting transformations?

The **President** thinks that the prohibition can not contemplate modifications of detail, but only sufficiently important transformations in order to make a new instrument of war of a certain firearm.

Captain **Scheine** likewise thinks that the expression "new firearms" ought to be understood as meaning an entirely new type, and that it does not comprise transformation and improvements.

Captains **Sakamoto** and **Mahan** ask whether a "new type" means a type not yet invented.

Admiral **Péphau** remarks that the definition of Mr. **SCHEINE** but lays down the question in other terms. What is a new type? An old cannon gradually modified and improved becomes a new type.

Count **Soltyk** shares this opinion. A new type is as a matter of fact but an old type, which is being improved daily.

Captain **Mahan** says we might conceive of a new type as being an acquired notion, and examine independently the question as to whether we should consent to accept the prohibition of the construction of any of them.

Admiral **Fisher** is of opinion that each country wishes to use the best weapon it can procure. Any restriction placed on the freedom of action in this regard would place civilized peoples in a dangerous situation in case of war with less civilized nations or savage tribes.

Captain **Scheine** thinks that a prohibition for an indefinite time would affect too numerous and too grave interests. Such an intention never entered the mind of his Government. In his opinion, it would be proper to limit the prohibition to a specified and not too long period of time, say three or four years. Moreover, existing cannon cannot be modified to any considerable extent in this interval.

However, by proceeding in this manner, a point of departure would be had. The question would be determined and would take form.

The **President** is of opinion that this proposition is of great importance, and that it might serve to put an end to the ruinous competition in which the nations are engaged in the manufacture of new firearms, which competition will [61] never come to an end, since after each effort they find themselves again at the same level.

This is really the basis of the idea of those who submitted this question to the deliberations of the Conference. Moreover, the only effective means would perhaps be to have recourse to penal clauses against the inventors of new means of destruction.

Admiral **Péphau** thinks that it will never be possible to prevent inventors from ruining nations.

Admiral **Fisher** says that these inventions serve rather to hinder and retard warfare. In order to accomplish what Mr. **Scheine** proposes it would be necessary to have a committee of "control."

But would the nations not consider such a "control" as an assault on their sovereignty?

Captain **Siegel** and Admiral **Péphau** state that it would be impossible to establish such a "control." There is no starting point, for one thing, and then the firearms in every country are undergoing transformation.

The **President** asks whether it is proper to summarize the discussion as follows: "however desirable it may be, in the opinion of the subcommission, to put an end to the competition in question, the question appears so difficult to solve that it will have to remain in the state where it now is."

Captain **Scheine** insists on his proposition. The fixing of a period of three or four years will promote the cause without jeopardizing the interests involved, and at all events the principle of the thing would have been sanctioned.

After an exchange of views, from which it is found that the subcommission thinks that the question should be more thoroughly explained and its scope more precisely indicated, Mr. **Scheine**, at the request of the **PRESIDENT**, declares that he will endeavor to present his proposition in a more precise form at the next meeting.

The second question, that of explosives, is now taken up.

The **President** thinks that as far as it is concerned an agreement will be established more easily.

Admirals **Fisher** and **Péphau** observe on the contrary that in this matter the

same difficulties are here as in regard to cannon: it is the starting point that is lacking. Moreover, no nation will consent to divulge the composition of the explosives which it is now using.

The **President** says the question is up whether it is necessary to take as a basis the explosives adopted up to the present by the nations, or all those which may be considered as already existing or known.

Mr. **Rolin** is of opinion that before all else it would be important to know the explosives in use. He observes thereupon that the use of explosives, especially for the small nations, constitutes a special means of defense.

If the consent were given to prohibit their use, these nations would be deprived of one of their most important means of defense.

Captain **Scheine** proposes a conventional pledge by virtue of which the Governments would abstain from introducing explosives during a certain period of time.

The **President** proposes to connect the suggestion made by Mr. **SCHEINE** to the analogous motion relating to firearms, and he asks Mr. **SCHEINE** to kindly state his ideas in a definite manner so that they might be submitted to the examination of the subcommission at a future meeting.

Captain **Scheine** says he will try to satisfy the request of Mr. **VAN KARNE-BEEK**.

The **President** proposes to pass on to the question of the *limitation of the use of explosives of formidable force already existing*.

Admiral **Péphau** and Captain **Tadema** think it would be desirable to determine the cases in which the use of these explosives will be permitted.

His Excellency Count **von Welsersheimb** backs this view.

Captain **Scheine** is of opinion that it will be necessary to take a pledge not to use explosives otherwise or in other cases than they are now used.

The **President** says that in this manner the question is laid down more precisely.

Admiral **Péphau** expresses doubts as to the possibility of assuming an engagement in the sense indicated.

Captain **Tadema** thinks the question deserves serious examination.

On the proposition of the **President**, the discussion is postponed to the next meeting

The meeting adjourns.

## SECOND MEETING

MAY 29, 1899

---

Jonkheer van Karnebeek presiding.

The minutes of the first meeting are read and adopted.

The **President**, after asking the cooperation of the naval delegates in regard to the questions of a technical nature, states that the problem of limiting naval armaments has two objects in view:

1. A need of economy: to decrease the burden of budgets.
2. A need of humanity: to decrease the evils caused by war.

The first point is the one with which the subcommission must concern itself now. The **PRESIDENT** invites Mr. **SCHEINE** to formulate the more detailed propositions which he announced at the last meeting.

Captain **Scheine** remarks that by the term "new type" he thought he had sufficiently defined his first proposition.

In view of the doubts expressed by some of his colleagues as to the possibility of determining what should be meant by a new type, he endeavored to formulate his propositions in a more detailed manner.

He recalls the three great transformations which cannon have undergone: first that of smooth bore to rifle cannon; then that of muzzle loaders to breech loaders (a new idea which completely changed the type of cannon), and, thirdly, the introduction of rapid-fire cannon.

In proposing in the name of the Russian Government to abstain for a certain length of time from putting into use a new type he had in view inventions which would involve as radical a modification as one of those just indicated.

Mr. **SCHEINE** states that naval ordnance may be subdivided into three categories:

1. Small rapid-fire cannon of a calibre less than 120 millimeters, and revolving cannon.
2. The great bulk of ordnance, comprising rapid-fire cannon of a caliber from 12 to 20 cm., and ordinary big cannon up to 43 cm.
3. Cannons for embarcations and landing.

From the standpoint of relieving budgets, the first group may be left aside.

The third comes rather within the domain of land war.

Taking only modern cannon into consideration, the second group comprises:

- a. Ordinary cannon of a caliber not exceeding 43 cm.
- b. Rapid-fire cannon from 12 to 20 cm.

His proposition is, firstly, to secure a pledge not to go beyond the calibres mentioned, that is, beyond a maximum of 43 cm. for ordinary cannon and 20 cm. for rapid-fire cannon.

But there is another point which distinguishes cannon, and that is their length.

Moreover, it would be well to assume obligations in regard to powders.

It will be sufficient to decide that the initial velocity of projectiles as produced by existing powders shall not be exceeded, namely, 700 to 800 meters per second.

It would be well, moreover, to assume a pledge not to introduce any new methods of discharging projectiles other than powder, and finally to prohibit the use of the force of the recoil for reloading cannon.

As to the duration of the pledge, it might be fixed at three or five years, in order to secure a starting point which, as far as possible, would not injure those nations whose ordnance is more or less in a state of transformation.

It would be well for each delegate to make known the date from which his Government would be willing to assume the pledge in question.

The **President** thanks Mr. **SCHEINE** for his interesting statement. He is of opinion that as a matter of fact it would be possible to assume a pledge not to exceed the limits indicated by the Russian delegate, without, however, forbidding one's self making improvements within these bounds.

Following remarks made by his Excellency **Turkhan Pasha**, Captain **Siegel** and Captain **Tadema**, Captain **Scheine** says that the limits of the calibers might be fixed at a little higher figures.

[63] Captain **Mahan** observes that if it is desired to limit calibers, armor plate must also be limited.

The **President** applauds the measure indicated by Mr. **MAHAN**, which would considerably relieve the budgets.

Captain **Siegel** remarks that not only should account be taken of the initial velocity, but also of the live force of the projectile, determined also by the weight of the shell.

Captain **Scheine** answers that the initial velocity to a certain extent determines the weight of the shell, which can not be increased without the range diminishing.

Admiral **Péphau** thinks it would be well to adopt the principle of the matter in general terms, without entering into details.

He makes the following proposition:

The contracting nations undertake, during a period of ....., beginning ....., not to subject the existing types of cannon to a radical transformation similar to that by which the muzzle loader was replaced by the breech loader. In no case shall the calibers now in use be increased.

The **President** believes that the most useful way of setting a limit consists in adopting figures. He asks the members to pass on the proposition of Mr. **SCHEINE**.

He would thank them if they would ask their Governments whether they consent to pledge themselves in accordance with this proposition.

Captain of Corvette Count **Soltyk**, according to the instructions from his Government, points out that it will be necessary at all events to allow small navies the possibility of improving their armaments until they have reached the level of the great navies.

Captain **Sakamoto** is of opinion that the limitation ought also to be prescribed as regards armor plate, and that it would be well to reach an agreement right at the start on the fundamental question of seeing whether the pledge taken is kept.

Mr. **Bille** observes that the thickness of an armor plate is not the only factor which determines its resistance. Could not this question be settled by finding a fixed figure for the proportion between the force of penetration of projectiles and the force of resistance of armor plate?

It would be necessary at all events to take into account also the armor plates of coast fortifications.

Captain **Mahan** expresses doubts as to the competency of the Commission to deal with this question, which does not come within the program.

Although disposed to consult with his Government, he does not believe they are inclined in the United States to restrict inventions, especially in regard to the improvement of armor plate. If it were desired to reach a proper limit in this regard, it would be necessary, in his opinion, to assume a pledge not to adopt any other new manufacturing process than those now used.

It is shown from an exchange of views that the majority of the members, before passing on Mr. **SCHEINE'S** proposition, wish to have the fundamental question laid down as formulated in the proposition of Mr. **PÉPHAU**.

Captain **Scheine** agrees with the opinion of his colleagues, but he thinks it would be better to refer the second paragraph for a subsequent examination.

The **President** asks the members to kindly ask instructions from their Governments in regard to the first paragraph of the proposition of Mr. **Péphau**.

The delegates declare their readiness to immediately address their Governments.

The **President** deems it useful to specify the scope of the proposed pledge, in this way that it should relate not only to the cannon which a certain nation has in use at a given moment, but also those which have been adopted in the various countries.

Within the limits of the pledge, it would therefore be permissible for nations which have cannon of inferior quality to improve them until they reach the level of the most advanced nation.

Admiral **Fisher** points out again that the small nations, which have to seek their force in the quality of their equipment, will not easily be disposed to place restrictions upon themselves in regard to new inventions.

As to wars against savage peoples, these restrictions would redound solely to the detriment of the civilized nations.

Finally, he calls attention to the difficulty of supervision (control).

Captain **Mahan** observes that the propositions of Mr. **PÉPHAU** do not seem acceptable to him without a restriction in regard to armor plates.

Captain **Hjulhammar** can not consent to impending inventions.

The meeting adjourns.

## THIRD MEETING

MAY 31, 1899

Jonkheer van Karnebeek presiding.

The minutes of the second meeting are read and adopted.

The **President** states that it is understood that the votes cast by the members of this subcommission do not positively pledge their respective Governments.

He successively consults the delegates in regard to the second part of the formula proposed by Admiral PÉPHAU: "in no case shall the calibers now in use be increased."

Captain **Scheine** is of opinion that this question, which goes into technical details, should not be connected with the first part of the proposition, which embodies a general principle.

In order to respond to the observations made by Admirals PÉPHAU and MEHEMED PASHA, the **President** defines the scope of the question laid before the subcommission by saying that it relates to the calibers now used by all the navies in general.

It appears from the various opinions expressed that the delegates from Austria-Hungary, Sweden and Norway, Japan (the latter under reservation as regards the duration of the pledge), the Netherlands, and Siam think that their Governments would have no objection to assuming the pledge in question, provided the limitation is adopted unanimously.

The delegate from Denmark has received no instructions from his Government; he submitted the question to it and it advised him to side with his aforementioned colleagues.

The delegates from the United States and Italy, the latter under the express reservation of leaving the matter to its Government, deem the pledge unacceptable.

Admiral **Mehemed Pasha** is of opinion that the two parts of the proposition of Admiral PÉPHAU are connected together and that the opinion of the Governments ought to be asked on the proposition as a whole. He therefore proposes to reserve the decision to be made on this question until the next meeting.

This motion is carried.

In consequence of this resolution the **Delegates** from **Germany** and **Great Britain** do not express their opinion. Captain **Siegel** confines himself to pointing out the chief and very serious objection which is raised both against the first part of the proposition of Admiral PÉPHAU and against the limitation of the calibers, which is closely connected therewith. This is the necessity of limiting armor plates.

The **President** asks Mr. SCHEINE *whether* he wishes to frame a proposition relating to the question of limiting the use of new explosives.

Captain **Scheine** answers in the negative, but his Government has instructed him to make a proposition concerning the prohibition of the putting into use of



any new kind of explosive, the invention of which seems possible. It is a question of prohibiting the use of projectiles loaded with explosives which spread asphyxiating and deleterious gases.

Captain of Corvette Count **Soltyk** and Admiral **Péphau**, having observed that in this case the use of all projectiles charged with explosives ought to be forbidden, since they all contain more or less injurious gases, the **President**, with the consent of Mr. **SCHEINE**, defines the proposition to the effect that the prohibition shall relate solely to projectiles whose *purpose* is to spread asphyxiating gases and not to those whose explosion *incidentally* produces these gases.

Captain **Mahan** declares that he has not made a special study of the question of explosives. He explains that in his opinion the use of projectiles of the kind in question can not be considered as being a means which is prohibited on the same ground as the poisoning of waters. Such projectiles might even be considered as more humane than those which kill or cripple in a much more cruel manner, by tearing the body with pieces of metal.

Supposing that projectiles of this kind should be invented, their use may produce decisive results. Moreover, it would involve neither useless cruelty nor bad faith, as exists in the case of poisoning waters. In his opinion, the use of those projectiles ought therefore to be considered as a lawful means of waging war.

[65] Mr. **Bille** asks whether the question is not rather within the competency of the subcommission which is dealing with the Brussels Declaration of 1874.

Mr. **Rolin** says that that subcommission, of which he is reporter, will not pass on the question until it learns of the result of the deliberations of the present subcommission.

Captain **Scheine** states in support of his proposition that as it is the task of the Conference to limit the means of destruction, it is logical to prohibit new means, especially when, like the one in question, they are barbarous in character and are, in his opinion, equivalent to the poisoning of a river.

The **President** observes that the latter action is treacherous in character, but that asphyxiating projectiles no more have this character than ordinary ones.

Mr. **Bille** sides with Mr. **SCHEINE**. He thinks that unless there is some absolute reason for authorizing the use of these projectiles, it is within the mission of the Conference to prohibit their use. If directed against a besieged city, they would perhaps hit more harmless inhabitants than the ordinary projectiles.

The **President** asks whether, in the opinion of the delegates, the Governments could consent to prohibiting the use of projectiles charged with explosives and the express purpose of which is to spread asphyxiating gases.

The following persons answered "yea" on the supposition that there be unanimity on the question: the delegate from France, the delegate from Austria-Hungary, who is of opinion that death by asphyxiation is more cruel than death by bullets; the delegates from Sweden and Norway, Japan, the Netherlands, Denmark, Turkey, Italy, and Germany.

The **Delegate** from the **United States** answers "nay," giving the following explanation, which he asks to have entered in the minutes:

1. The objection that a warlike device is barbarous has always been made against new weapons, which have nevertheless eventually been adopted.

In the middle ages firearms were accused of being cruel; later on an attack was made against shells, and still more recently (the author remembers this very well) against torpedoes.

It does not seem demonstrated to him that projectiles filled with asphyxiating gases are inhuman and uselessly cruel devices, and that they would not produce a decisive result.

2. He is the representative of a nation which is actuated by a keen desire to render war more humane, but which may be called upon to make war, and it is therefore necessary not to deprive one's self, by means of hastily adopted resolutions of means which might later on be usefully employed.

The **Delegate** from **Siam** has received general instructions to approve as far as possible any humanitarian measure, but he wonders whether the projectiles in question ought not rather to be considered as more humane instruments of war than others; consequently, he reserves his vote until he has referred the matter to his Government.

The **Delegate** from **Great Britain** is of opinion that it is unlikely that an invention of the kind will be made, but that at all events no doubts should exist on the point that the prohibition is to relate solely to projectiles whose express purpose is to spread asphyxiating gases. Along this line of ideas Sir **JOHN FISHER** sides in favor of prohibition.

The question is now taken up whether the Governments could agree to prohibit diving or submarine torpedoes.

The **President** asks the members of the subcommission to express their opinion on this subject. In his opinion, it is sufficient for one nation to adopt these terrible devices of war in order that all the others be free to make use thereof.

Captain **Siegel** believes that if all the other Governments agreed not to adopt vessels of this kind, Germany would join in in this understanding.

The **Delegate** from the **United States** wishes to preserve full liberty for his Government to use submarine torpedo boats or not and to await the decision of the other Governments on this subject; he reserves his opinion.

The **Delegate** from **Austria-Hungary** declares that, for the time being, his country does not possess any submarine or diving torpedo boats, for these devices have not yet acquired the necessary perfection in order that they may be used practically; it is necessary therefore at present for Austria to confine itself to attentively follow the progress of this new invention, which, in the personal opinion of Count **Soltyk**, may be used for the defense of ports and roadsteads and render very important services.

The **Delegate** from **Denmark** asks to refer the matter to his Government, which, in his opinion, will agree to a prohibition if the nations unanimously adopt it.

[66] The **Delegate** from **France** thinks that the submarine torpedo has an eminently defensive purpose, and that the right to use it should therefore not be taken from a country.

The **Delegate** from **England** thinks that his country would consent to the prohibition in question if all the Great Powers were agreed on this point. It would concern itself little as to what decision the smaller countries reached.

The **Delegates** from **Italy** and **Japan** express a similar opinion to that of Mr. **SIEGEL**.

The **Delegate** from the **Netherlands** thinks that the submarine torpedo is the weapon of the weak, and he does not think its use can be prohibited.

The **Delegate** from **Russia**, under reservation with respect to unanimity expresses himself in favor of prohibition.

The **Delegate** from **Siam** desires, in this as in the preceding case, to refer the matter to his Government, inasmuch as on the one hand he has received general instructions to agree, as far as possible, to any humanitarian measure, and as on the other hand he thinks, like **Mr. TADEMA**, that the necessities of defense of the small nations must be taken into serious consideration.

The **Delegate** from **Sweden and Norway** thinks that the **United Kingdoms** could not, for the reason expressed by the delegate from the **Netherlands**, agree to prohibition.

The **Delegate** from **Turkey** wishes to reserve to the defensive side the right to use submarine torpedoes.

The question of war vessels *with rams* is now taken up.

**Admiral Sir John Fisher** expresses, in regard to the prohibition to construct vessels of this kind, an opinion similar to that which he gave regarding submarine torpedoes.

**Admiral Péphau** endorses the opinion of **Sir JOHN FISHER**.

After an exchange of views, the **President** states that it is understood:

1. That the prohibition shall not extend to existing vessels, nor to those whose plans of construction are already under way.

2. That by vessel with a ram should not be meant a war vessel which, though not provided with a ram, is reinforced at the stem so as to be able to give and stand a shock.

**Captain Mahan** says that, being thus defined and provided there be unanimity, the prohibition appears acceptable.

**Captain Siegel** remarks that several navies have worked out a certain program for new constructions. Certain vessels provided for in these programs are already finished, others are under construction, while the rest, although the plans thereof are absolutely determined upon, have not yet been begun. It is impossible to change the plans, for the program calls for the same tactical and nautical qualities for all the vessels and these qualities would be changed if the form of the front part were not preserved.

**Captain Sakamoto** would also like to exclude from the prohibition the vessels already planned for in accordance with a determined organization.

The **President** says that the humanitarian purpose pursued by the Conference is too lofty to necessitate the taking into account of the plans drawn up by engineers; at all events the latter would have but to do their work over again.

However, he deems it necessary to admit all vessels with a ram in regard to which any steps had been taken toward their execution without their being under construction, for instance, those which have been ordered of the builders.

**Captain Scheine** has not been instructed to frame any fixed proposition regarding the question put to a vote.

In placing this question on the program, his Government rather entertained a desire to ascertain the opinions of the various Governments.

He wishes to ask for precise instructions.

**Captain of Corvette Count Soltyk** is authorized to declare that the superior command of the **Austro-Hungarian navy** can in no wise commit itself in regard to this question.

**Captain Sakamoto** agrees with the opinion that in case of unanimity the prohibition appears acceptable, with reservation made in regard to the date of beginning of the pledge.

**Admiral Péphau** likewise holds the opinion expressed by the majority of

his colleagues, with the restriction that the prohibition shall not take effect until after a subsequent date, up to which the Governments must be allowed the necessary time to determine the constructions already projected.

Captain **Hjulhammar** observes that by abolishing the ram and not the torpedo little will have been done for the cause of humanity.

[67] Moreover, the ram is useful against transports in case of landing, a matter which is important to nations having an extensive coastline.

He is personally opposed to the idea of prohibition, but will ask the opinion of his Government.

The **President** says that as the order of the day of the subcommission is exhausted, the next meeting might be deferred, in accordance with the decision reached, to the following Monday.

He asks whether any one has any more propositions to make.

Captain **Scheine** proposes, subject to subsequent change of wording, that the contracting Powers recognize in neutral Powers the privilege of sending their agents to the theatre of maritime war, with the authorization and under the supervision of the competent military authorities of the belligerent Powers.

Several members observe that this question is not within the competence of the Commission, or even of the Conference.

It is for the respective Governments to decide in each particular case what they can grant to neutral Governments in regard to this question.

There does not seem to be an urgent need to regulate this matter.

Captain **SCHEINE** says that the case recently presented itself and that an exchange of views on this matter would be exceedingly useful.

The subcommission, without going any further into the discussion, postpones a continuance thereof to next Monday.

## FOURTH MEETING

JUNE 5, 1899

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Jonkheer van Karnebeek presiding.

The minutes of the third meeting are read and adopted.

In the first place the question of vessels with a ram is reverted to.

Mr. Bille says that his Government has just informed him that it can not adopt a prohibition against a vessel with a ram.

The definition of a ram, as accepted at the last meeting, namely, that by a vessel with a ram is not to be meant a vessel with reenforced stem, removes all excuse for this prohibition.

The ram can not, in the opinion of his Government, be considered as a weapon, but as an integral part of the hull.

He deems that it constitutes a useful means of defense, which affords small craft a single chance to overcome large ships.

Captain **Scheine** says that, as there is no unanimity among the members, the delegate from Sweden and Norway having at the previous meeting also opposed the prohibition of the ram, he will not insist on this proposition.

The **President** observes that as the mission of this assembly is merely to exchange its views on the subject, the question of the maintenance or abolition of the ram can not be settled here, but the opinions reproduced in the minutes have been acquired as a result of the deliberations and will have their value to the Governments which will have to pass on the question later on.

The question of the ram, terminated as far as the subcommission is concerned, therefore, remains on the order of the day for the full session of the Commission, and the reporter will kindly insert in his report the different opinions which have been expressed.

The **PRESIDENT** proposes afterwards to take up the first part of the proposition of Admiral **PÉPHAU**, thus worded: "The contracting nations undertake, for a period of . . . . . from . . . . ., not to have the existing types of cannon undergo any *radical* transformation similar to that of the muzzle-loading cannon being replaced by the breech-loading," and he invites the delegates who have received instructions on this subject from their Governments to kindly express their opinions.

The **Delegate from Germany** remarks that he can not accept this proposition owing to its vague form. He explains his vote as follows:

The amendment offers the great advantage that it might be adopted without binding one's self.

It is very ably conceived and its terms enable anything to be inserted in it that is desired.

[68] But this advantage is at the same time a weakness and a ground to be invoked against its adoption.

If such a form of wording were accepted, no one would be satisfied, neither military men nor the public, which would at once understand that this means was chosen only in order to get out of a difficulty.

If we consent to adopt a formula of the kind in question, we shall become responsible for the sense. The text thereof is too vague and uncertain to permit of a certain interpretation.

The **Delegate** from the **United States** declares on behalf of his Government that he can not agree to the proposition.

The **Delegate** from **Austria-Hungary** makes the following declaration:

The Austro-Hungarian navy department, considering that, even though our firearms can, without doubt, compete with those of like class of other countries, my Government is not in a position to give up the improvement of its firearms even for a certain length of time to be determined later on.

It looks at the question of new explosives and powders for cannon and guns from the same standpoint.

The **Delegate** from **Denmark** declares that he is authorized to accept the proposition.

The **Delegate** from **Spain** says he can not accept it.

The **Delegate** from **Great Britain** likewise declares that the proposition is not acceptable by reason of the great difficulties which would stand in the way of putting it into practice.

The **Delegate** from **Italy** declares that he can not accept the proposition.

The **Delegate** from **Japan** believes that the proposition might be accepted by his Government, provided the length of the pledge were not too long and there were unanimity.

The **Delegate** from the **Netherlands** declares that though he deems the proposition very vague, he believes that his Government can accept it.

The **Delegate** from **Portugal** is of opinion that the proposition is very vague and can not be accepted.

The **Delegate** from **Roumania** believes that the Roumanian Government would willingly endorse the first part of the proposition of Admiral PÉPBAU relative to the radical transformations of existing types of cannon for naval artillery, provided the duration of the pledge were fixed, this proposition having been indorsed by Mr. SCHEINE.

The **Delegate** from **Siam** accepts.

The **Delegate** from **Sweden and Norway** abstains from expressing an opinion.

The **Delegate** from **Turkey** makes the following declaration:

The Imperial Ottoman Government procures abroad the necessary armaments for its ships.

If therefore other Powers accept the proposition of Admiral PÉPBAU, said Government, as soon as it has attained the same degree of perfection as the other Governments, will naturally take care not to exceed this degree as long as the other Powers do not change their armaments.

The **President** asks the subcommission to kindly express itself on the second part of the proposition in regard to the caliber of cannon.

Captain **Scheine** asks authority to present another and more precise proposition.

He proposes that the Governments undertake:

1. Not to exceed a caliber of 17 inches, or 431.7 mm. for any kind of cannon.
2. That the length of cannon be fixed at a maximum of 45 calibers.
3. That the initial velocity does not exceed 3000 feet, or 914 meters.
4. For armor plates the maximum thickness will be 14 inches, or 355 mm., and of the same quality as that manufactured according to the latest Krupp patent.

The **President** observes that this new proposition, by introducing new figures, acquires a much more precise character; at a previous meeting the general opinion was not in favor of too determinate limits; personally he prefers them, for the pledge to be given would gain thereby in value and significance.

[69] He thinks he must consult again the delegates in regard to the figures proposed by the delegate from Russia.

Admiral **Péphau** thinks that the amendment of Mr. **SCHNE** is very extensive and complex. In it are mentioned four different factors: caliber, length, initial velocity, and thickness of armor plate. According to him, each of these factors should be voted on separately.

Colonel **Coanda** objects to the proposition of placing limits only on the initial velocity, as this appears insufficient to him; in limiting the velocity, the weight of the projectile ought also to be fixed, in order that the initial force may be calculated.

The limit imposed by fixing the length of the cannon depends on the powder used. If therefore only the initial velocity is limited, and on the other hand the maximum resistance for the armor plate is fixed, this would be dooming the armor plate in advance to be overcome.

Captain **Schne** says that the weight of the projectiles is to a certain extent limited by the initial velocity. If it is desired to increase the weight of the projectiles without diminishing the range, it will be necessary also to increase the initial velocity.

Colonel **Coanda** remarks that then we shall fire a shorter distance or with somewhat less precision and that nevertheless we shall then succeed in perforating the armor plates.

The **President** thinks the proposition should be voted on as a whole, because there is a necessary correlation between the different calibers. He successively consults the delegates.

Captain **Siegel** declares that it is impossible for him to indorse the proposition of Mr. **SCHNE**.

The question, being too complex, requires a thorough study, especially in order to appreciate the correlation between the various figures and in order to fix the relations between the resistance of the armor plate and the power of the cannon.

Captain **Mahan** is of the same opinion.

Count **Soltyk** says he can not accept the responsibility of expressing an opinion without obtaining the view of his Government.

Moreover, he agrees with Admiral **PÉPHAU** that the study of such a problem ought to be referred to a technical committee and that a solution will not be obtained in a short time.

Mr. **Bille** thinks the question is of too technical a nature for him to be able to pass an opinion on it. Nevertheless, his Government would endorse whatever decision secured unanimity of votes.

Admiral **Péphau** and Count **de Serrallo** declare also that they can not pledge themselves right now as to Mr. **SCHEINE**'s proposition, the question being too complex.

Admiral **Péphau** remarks moreover that the question of the armor plates is not sufficient since new processes might be invented which, with less thickness, would lend greater resistance to armor plates.

The **President** thinks that, without claiming positively that it is impossible to arrive at an understanding regarding the formulas presented by Mr. **SCHEINE**, the delegates deem it absolutely necessary to submit the question to a technical examination in each country. He therefore proposes that the discussion be deferred until a subsequent meeting.

Captain **Sakamoto** expresses a fear that, in view of the remoteness of his country, it might be that the results of a technical investigation begun in Japan on this complex question would not reach him until after the Conference.

The **President** makes an appeal to the delegates in order to attain a result before the end of the Conference, that is, within a few weeks, even if it is necessary to wait until the last plenary sessions in order to receive the opinions of the various Governments or at least a majority of them; it would be regrettable to allow this opportunity to pass of approaching the principal purpose which it was desired to attain, namely, a relief of the budgets.

He asks whether the delegates think they can still receive in time the answers of their Governments.

Captain **Scheine** asks that the delegates kindly transmit his proposition to their Governments, and ask information at the same time as to the figures which these Governments would be willing to adopt in case the afore-mentioned figures should not suit them.

The **President** deems that it would be useful to proceed thus; and he requests the delegates to ask their Governments whether they would be willing to assume a pledge limited by figures in case the figures proposed by Russia should appear acceptable to them, and to ask them to let them know what figures they would like to substitute in their stead.

In connection with a remark by Admiral Sir **JOHN FISHER**, the **President** [70] says that, according to him, it is evident that a limitation of the power of cannon and armor plates of war-ships should also be applicable to land batteries for the defense of roadsteads and ports.

The **PRESIDENT** reverts to No. 3 of the circular of Count **MOURAVIEFF**. He calls attention to the fact that when it is a question of already existing explosives of a formidable power, the subcommission was of opinion that the expression "to limit the use" contemplates a limitation of the cases in which it will be possible to use these explosives.

The **PRESIDENT** asks Mr. **SCHEINE** whether he has any proposition to make in this regard.

Captain **Scheine** thinks that No. 3 of the circular relates rather to land warfare. The subcommission partakes of this view.

The **President**, after asking the reporter to kindly take note in his report of these different conclusions, again invites Mr. **SCHEINE** to accurately define the proposition which he made at the previous meeting concerning the admission of the agents of neutral countries on the scene of the naval war.



Captain **Scheine** says that he maintains his proposition save a modification of the word "right" into "privilege."

The **President** asks Mr. **SCHEINE** whether he desires to assimilate the position of the afore-mentioned agents to that of military attachés in land wars.

After an exchange of views in this regard, which was participated in by Count **Soltyk**, Admiral **Péphau**, Mr. **Bille**, and Admiral Sir **John Fisher**, the **President** states that it is shown from the opinions expressed that it is a question here of the admission of agents who are situated on the vessels of one of the belligerents, but that usages and practices vary in the different countries in regard to this subject, and that it is desired to remain free to reach a determination in each case, according to circumstances.

The subcommission does not believe that this matter is within its competency and does not wish to take it under further consideration.

The **President** remarks that the program of this subcommission is exhausted and he requests the reporter to kindly prepare his report.

Count **Soltyk** asks that his report be read at a coming meeting of the subcommission before being read at a plenary meeting of the commission.

The **President** joins in this request and proposes that the reading of the minutes of to-day's meeting be postponed until the same meeting.

Captain **Scheine** proposes again to the subcommission to examine whether it would not be possible in time of peace to cover over the rams of war vessels in order to lessen the danger presented by vessels with rams to other vessels in case of collision.

After an exchange of views between Sir **John Fisher** and Messrs. **Siegel**, **Mahan**, **Sakamoto**, and **Scheine**, it is ascertained that the means which might be used for this purpose are still too vaguely known to be discussed, and the **President** states that mention will be made in the minutes of the desire expressed by the subcommission to see the purpose suggested by Mr. **SCHEINE** accomplished. As to the question proposed by Mr. **SIEGEL** as to whether it is still necessary to make inquiries of the Governments in regard to the prohibition of projectiles containing asphyxiating gases and regarding submarine torpedoes, the **PRESIDENT** declares that in his opinion there is no need of reverting to these questions.

The **PRESIDENT** will convoke the members for the next meeting.

The meeting adjourns.

# FIFTH MEETING

JUNE 16, 1899

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Jonkheer van **Karnebeek** presiding.

The minutes of the last meeting of June 5 are read and approved.

At the request of the **PRESIDENT**, Captain of Corvette Count **Soltyk** reads his report.

In terminating, he invites those of his colleagues who might wish to have [71] a modification made in the terms in which he has related their opinions to kindly communicate their desires.

The **President**, in the name of himself and his secretaries, thanks the reporter for the sentiments which he was pleased to express and which the subcommission endorsed.

Acting as spokesman for the subcommission, and in his own name, he wishes to warmly thank Count **SOLTYK** for the eminent manner in which he has discharged his very difficult task.

He asks whether the delegates desire to see any changes introduced in the report.

Captain **Sakamoto** asks that, on page 2, paragraph 4, where mention is made of his question regarding the meaning of the definition of the term "new type," the words "now already invented but not yet adopted" be changed to "not yet invented at the present time."

The **President** states that the terms of the report correspond to those of the minutes of the first meeting, approved with the consent of Mr. **SAKAMOTO**.

Mr. **Raffalovich** insists that a special mention be made in the present minutes of the request of Mr. **SAKAMOTO**, which tends to modify an opinion expressed by him and embodied in the minutes.

Captain **Mahan**, after declaring that the modification desired by Mr. **SAKAMOTO** is in accord with the opinion that he had wished to express himself on the same question, Count **SOLTYK** and the subcommission adopt the proposed modification.

Mr. **MAHAN** asks permission to change, both in the minutes approved May 31 and in the report of Count **SOLTYK**, the expression "or uselessly cruel" into "cruel without being decisive." (See his opinion as to projectiles charged with asphyxiating gases.)

The change is adopted.

In concert with the reporter, some slight modifications are furthermore made in the report, which will be reprinted, taking into account the observations which have been made.

Baron **Bildt** asks whether the subcommission does not intend to pass to-day on the last propositions of Mr. **SCHEINE**, relating to cannon, powders, and armor

plates, in regard to which it had been decided to ask instructions from the Governments.

The **President** remarks that it had been understood that this question should be left open until the end of the Conference; in the general opinion of the delegates it requires a special study by the technical experts of the various Governments.

It would be a very happy result with a view to relieving budgets if, at the final meeting, it were possible to come to an agreement on a positive proposition in regard to naval armaments.

Baron **Bildt** thinks that it ought to be stated in the minutes and in the report to what conclusion the subcommission has come on this question.

The **President** remarks that the minutes and the summary report appear to him clear and explicit in this regard.

Consequently it is decided that paragraph 6, page 4, of the report shall be drawn up as follows:

Being therefore unable to secure a solution until a technical examination has been made in each country, the subcommission decides to postpone the discussion to a subsequent period in order to await the decision of the respective Governments, which the delegates have promised to ask for.

The **PRESIDENT** says it is well understood that the question may be discussed anew at a meeting either of the First Commission in session or at a meeting of the plenary Conference, or even at a subsequent meeting of the subcommission, which might be called for this purpose.

Upon the proposition of Mr. **Scheine**, the delegates will make known to the president or to the bureau the answers of their Governments as fast as they are received.

Admiral **Fisher** congratulates the president for the competency he has shown, in the difficult deliberations of this subcommission, which often had to render impossibilities possible, as well as for the perseverance with which he has endeavored to attain positive results.

Captain **Siegel** endorses the words spoken by Sir **JOHN FISHER**. (*Unanimous applause.*)

Mr. **van Karnebeek** thanks Admiral **FISHER** for his kind words and all the members for their benevolent and useful cooperation.

The meeting adjourns.

## SIXTH MEETING

JUNE 26, 1899

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Jonkheer van Karnebeek presiding.

The **President** remarks that a new task has been entrusted to the subcommission by the plenary Commission, namely, the examination of the propositions made by the Russian Government in regard to the limitation of the naval budgets. He states that a certain freedom of action is left to the subcommission as to its mode of proceeding.

On the proposition of Admiral **Péphau**, backed by several other delegates, it is decided not to appoint a special committee but to take up the discussion of the Russian propositions at once. Following the deliberations it will perhaps be necessary to appoint a drafting committee.

Captain **Scheine** gives some explanations on these propositions and specifies the pledge to be taken in this respect. Each Government is to have a right to fix its budget at such figure as may seem desirable to it, but once this budget is fixed and communicated, its total shall not be increased for a period of three years from the time the pledge goes into force.

The Governments will therefore not be obliged to take the budgets now existing as a basis for the pledge, but may choose as such a budget which is higher than that in force at the present time.

In order to prevent misunderstandings, Mr. **SCHEINE** remarks that by "amount of the budgets" he means both extraordinary and ordinary expenditures.

The **President** observes that it had been his intention to make a similar suggestion, namely, that the Governments should inform one another of what expansion they wished to give to their navies and that these figures, once communicated, should not be changed during a certain period.

Captain **Siegel** desires to show the situation of the German navy in a few words. It is precisely and very clearly defined by the law regarding the fleet. The propositions of Captain **SCHEINE** aim at having the expenditures fixed in advance for a period of three years; but they do not imply the condition that the budget shall remain the same for each year; on the contrary, it may be changed provided the increase is foreseen in advance. These propositions are already fulfilled and even surpassed by the "law regarding the fleet," in which provision is made simultaneously, for the following years, for the number of officers and crews and for the harbor works to be executed. As to the first paragraph of the Russian proposition, the law goes further and even defines the types of vessels to be constructed.

It follows that the German navy is out of the controversy as regards these propositions, it not being interested in the matter for the reason that what is demanded already exists.

Admirals **Fisher** and **Péphau**, Captain **Mahan**, Mr. **de Baguer**, and Count **de Macedo** point out that account must be taken of the difficulties which might arise in the way of an acceptance of the Russian propositions. In their opinion, they consist chiefly in the influence which the parliaments have a right to exercise over budgetary questions.

There are objections to the Governments' pledging themselves in regard to the amount of the budgets on which the national legislature must yet pass. Moreover, parliaments are renewed sometimes within very short periods, and, as Mr. **de Baguer** observes, the budgetary year, for instance in Spain, begins on July 1, and in other countries at a different date.

Count **de Macedo** observes furthermore that in Portugal the naval budget at the same time comprises many colonial expenditures.

Captain **Mahan** insists on the difficulty of determining the sum which is to be taken as a basis as long as the amount to be so taken by the other Governments is not known.

Captain **Scheine** answers that each Government shall be free to increase its present budget and the tonnage of its fleet by as many per cent. as the country which has indicated the largest increase.

Captain **Siegel** observes further that a law exists in Germany regarding the fleet, but he adds that the expenditures provided for by this law can be [73] considered only as a minimum deemed absolutely indispensable. Germany can by no means be bound by this law, and retains full freedom and right to increase her expenses if she deems necessary.

Captain of Corvette Count **Soltyk** does not think that his Government can accept the proposition; personally he will never consent to its binding itself by means of such a pledge. He thinks that every country should remain free to increase its navy as much as it sees fit.

The **President** thinks that as it is only a question of a period of three years, it will perhaps not be difficult for the Governments to reach an agreement with their Parliaments and to have a convention adopted along the lines of the Russian propositions.

As to the Netherlands, he thinks there will be no insurmountable obstacle in the way of acceding to such a convention.

However, he is aware of the fact, as was observed by Mr. **BILLE**, that there is some danger in the Russian propositions.

There will be a temptation to assure one's self a very broad margin for the three years. And perhaps there may then arise a tendency to take as much advantage as possible of this margin and to construct even more ships than would have been built if the international engagement had not been concluded.

While recognizing the difficulties in the way of an immediate solution of this question in an affirmative way, he nevertheless believes that the subcommission can not take on itself the responsibility of completely rejecting the Russian propositions right now.

The question is so important, but at the same time so complex, that the Governments must be left time enough to examine it more closely.

He therefore proposes to leave the question open as was done in regard to

the question of naval cannon and of guns, and to commend it to the study of the Governments, which will eventually decide it at a subsequent conference.

This proposition is backed by Mr. MAHAN.

Captain **Scheine** thinks this proposition goes a little too far. He would prefer to have the decision to be reached postponed until a subsequent meeting, either of the subcommission or of the Commission.

He thinks it would still be possible for a large number of the delegates to secure instructions during the continuance of this Conference.

The proposition of the **PRESIDENT** is put to a vote.

The following voted for the proposition: France, Japan, Netherlands, Sweden and Norway, and Turkey.

The following voted nay: Denmark, Great Britain, Portugal, Russia, Siam.

The following abstained from voting: Germany, America, Austria-Hungary, Spain, Italy.

The proposition is therefore not adopted.

A vote is now taken on the proposition to adjourn, as made by Mr. **SCHEINE**.

Denmark, France, Great Britain, Netherlands, Portugal, Russia, and Siam voted in favor of the proposition.

America voted nay.

Germany, Austria-Hungary, Spain, Italy, Japan, Norway and Sweden, and Turkey refrained from voting.

The subcommission decides that the proposition may be considered as being accepted.

On motion of the **President**, a committee of reporters is chosen, being composed of Messrs. **BILLE**, Count **SOLTYK**, **SCHEINE**, and **CORRAGONI D'ORELLI**.

This committee is to present to the plenary Commission a succinct report on the discussion which took place at this meeting and on the decision reached therein.

The subcommission authorizes the president and the bureau to draw up the minutes of the last meeting.

The meeting adjourns.

## SEVENTH MEETING

JUNE 30, 1899

Jonkheer van Karnebeek presiding.

The minutes of the sixth meeting are read and adopted.

The **President**, in answer to a question by Messrs. SIEGEL and MAHAN, once more defines the decision reached by the subcommission at its last meeting, [74] to the effect that the delegates are to refer the Russian propositions to the subsequent study of their respective Governments and that they will endeavor to secure instructions in regard to these propositions before the end of the Conference.

In reply to another question by Mr. SIEGEL, it is stated that the refraining votes on a proposition are neither considered favorable or contrary to the proposition in question.

The report of the special committee appointed at the previous meeting is read and approved.

Mr. Bille remarks that the idea which prevailed at the last meeting was recognition of the great difficulties in the way of adopting the Russian propositions, although it was not desired to reject these propositions entirely and forever.

It was pointed out that the solution of this question concerned not only the Governments, but also the parliaments. At all events the Governments will be the ones to deal with the matter primarily.

However, as the subcommission was not competent to judge of the relations existing between the Governments and their parliaments, the committee of reporters had to confine itself to proposing that the question be submitted to the Governments.

The **President**, recapitulating the decision reached by the subcommission and contained in the report, remarks that the full Commission will now be the one to pass on this question.

The meeting adjourns.

**PART III**  
**SECOND COMMISSION**





[1]

## PLENARY COMMISSION

### FIRST MEETING

MAY 23, 1899

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Mr. **Martens** presiding.

The **President** thanks the Commission for the honor it has done him. He hopes that at the end of its labors the Commission will be able to say with the poet: "I have done a little good, and that is my best work."

Mr. **MARTENS** recalls that the task of the Second Commission is to examine Articles 5, 6 and 7 of the circular of Count **MOURAVIEFF**, relating to the Geneva Convention of 1864, to its extension to maritime war, and to the revision of the draft Declaration elaborated by the Brussels Conference of 1874.

The Commission may therefore be subdivided into two subcommissions, the first to examine the questions relating to the Red Cross and the second those concerning the Brussels project regarding the laws of war.

As president of the first of these subcommissions, Mr. **MARTENS** proposes Mr. **ASSER**, delegate from the Netherlands.

On motion of Chevalier **Descamps**, Mr. **MARTENS** is designated as president of the second subcommission.

The **President** proposes to the Commission to fix the procedure with regard to the record of the meetings. He suggests that no authentic and printed minutes be prepared, but that the member of the Commission designated as reporter take notes which the Commission may consult.

Mr. **Asser** insists that it will be necessary for the members of the Commission who have taken the floor during a meeting to be able to verify the exactness of the record as regards themselves. (*Approval.*)

Mr. **Renault** explains that if the reporter of a commission is obliged to take notes throughout the meeting, he may be prevented from advantageously following and taking part in the discussions.

In the second place, he expresses the opinion that the reporter should not be designated until the discussion is closed and solutions have been adopted.

Chevalier **Descamps** proposes that as regards the minutes the secretariat be instructed to prepare:

1. As complete an account as possible of the meeting, which will not be printed and which will be kept at the disposal of the Commission.

2. An analytical account summarizing the formal propositions made at meetings which will be distributed to all the members.

This mode of procedure will enable the minutes of the Commission not to

be given an authentic and formal character and will insure a more free, intimate, and less official discussion.

As regards the designation of the reporter, Mr. DESCAMPS is not of opinion that it should await the formation of a majority. According to him, the mission of the reporter of a diplomatic conference ought to be to point out to the plenary assembly the general outline of the discussions and the character of the solutions proposed, without taking into account his personal opinion. He is therefore of opinion that the reporter may be appointed at once.

[2] The Commission indorses this view.

The **President**, with the consent of the Commission, says that secrecy will be guarded in respect to the deliberations and that the minutes will be absolutely confidential in character. He proposes to proceed to a first exchange of views regarding the object of the labors of the Commission.

Mr. **Renault** observes that the revision of the Geneva Convention of 1864 does not figure in the program outlined in the Russian circular of December 30, 1898.

The meeting adjourns.

## SECOND MEETING

MAY 25, 1899

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**Mr. Martens** presiding.

The minutes of the first meeting are read and adopted.

The **President** informs the Commission that Professor **NAGAO ARIGA** has been appointed technical delegate of the Japanese Government to the International Peace Conference.

**Mr. MARTENS** invites the Commission to exchange its views on the different points submitted to its deliberations; he thinks that Articles 5 and 6 of the Russian circular might be proposed for study by the first subcommission; Article 7 of the same circular might constitute the task assigned to the first [second] subcommission.

He explains that the discussion of the additional articles of 1868 will necessarily lead the Commission to consider the articles of the Geneva Convention of 1864, but that, in order to remain within the limits indicated by the program of Count **MOURAVIEFF**, the Commission will have to confine itself to expressing wishes.

It would therefore be useful for the Commission to proceed to an exchange of general views on the two following questions:

1. Is it desirable that the Red Cross be respected in maritime war?
2. Should the principle of the neutralization of relief vessels for shipwrecked persons be recognized?

A general discussion of these points would impart a useful direction to the labors of the first subcommission.

Then the questions relating to the Brussels draft Declaration might be examined in the same way, so as to define the task of the second subcommission.

Colonel **Gilinsky** reads two propositions which were prepared by the Russian War Ministry and which appear to him acceptable as a basis for the eventual revision of the Geneva Convention.

After an exchange of observations among Messrs. **Martens**, **Asser**, **Beldiman**, and General **Mounier**, it is decided that the propositions of Colonel **GILINSKY** shall be inserted in the minutes in order to serve as materials for the subsequent studies of the question.

These propositions are worded as follows:

1. Revision of the Geneva Convention of 1864, taking into consideration the propositions made by the International Conferences of the Red Cross Society in 1867, 1869 and 1884.

The purpose of such revision would be to bring the provisions now in force into concordance with the conditions of battles of to-day, the great masses of combatants requiring a prompt and adequately organized relief.

For this purpose private medical societies, with their own means of transpor-

tation, and foreign physicians enjoying the protection of the sign of the Red Cross, might be permitted to participate in the work of relief.

2. Creation of an "International Red Cross Bureau," recognized by all the Powers and established on the principles of international law, in order to settle all questions regarding volunteer medical assistance and relief during war, in accordance with the declaration of Russia at the Red Cross Conference held at Geneva in 1884.

[3] Chevalier **Descamps** expresses the desire that the competency of the Commission may be exactly determined, so that the discussion may be limited to the extent of this competency, and he requests the delegates from Switzerland to kindly make known any special views which they might have on the questions.

Mr. **Odier** does not think that the Commission is competent to proceed to a revision of the Geneva Convention. In order to undertake such a work, it would be necessary first of all to have the assistance of technical experts in the medical and sanitary line, besides representation from all the States signatory to the Convention. Under these circumstances Mr. **ODIER** thinks that it would be well for the Commission to express its opinion right now, by means of a declaration, regarding the suitability of referring to a special conference the examination of the revision of the acts of 1864 and 1868.

Mr. **Asser** considers that a distinction should be made between competency in fact and competency in law. It is true that, for the reasons expressed by Mr. **ODIER**, the Commission is incompetent in fact to pass on questions of a medical and sanitary nature.

However, he does not think that the Commission ought to consider itself limited so narrowly to the text of the circular of Count **MOURAVIEFF**, and he recalls the fact that in accordance with the circular of Mr. **DE BEAUFORT** of April 6, 1899, prepared with the consent of the Russian Government, the Conference will have to examine not only the points set forth by the **MOURAVIEFF** program, but also "all other questions connected with the ideas set forth in the circular of August 12/24, 1898."

An exchange of views along these lines appears to him to be within the competency of the Commission and might, in a form to be determined by the subcommission, serve to call the attention of the Governments to the points which have been taken into consideration.

The **President** thinks that he can interpret the passage cited from the circular of Mr. **DE BEAUFORT** in the sense indicated by Article 35 of the Declaration of 1874 concerning the laws and customs of war.

He thinks, to sum up, that the Commission is not competent to raise questions which depart from the eight points of the circular of Count **MOURAVIEFF**, but that the first subcommission may express ideas and wishes which do not bind the Conference.

As to the task of the second subcommission, it is defined by the text of the Declaration of 1874. The Russian Government thinks that the time has come to proceed to a revision and confirmation of this act which, although not ratified, has been sanctioned by military practice.

Upon an inquiry by Chevalier **DESCAMPS**, the **President** declares that the delegates will have full freedom to propose amendments to the different articles.

The Commission adopts this mode of procedure.

The meeting adjourns.

## THIRD MEETING

JUNE 20, 1899

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Mr. **Martens** presiding.

The minutes of the meeting of May 25 are read and adopted.

The **President** says that the order of the day calls for an examination of the report of the first subcommission and of the articles proposed with a view to adapting the principles of the Geneva Convention to maritime war. As these documents are before the eyes of the Commission, the **PRESIDENT** deems it needless to read the report, and thinks that it will be sufficient to read the articles.

No observation having been made regarding the propositions of the subcommission as a whole, the articles are now read.

[4]

### ARTICLE 1

Military hospital ships, that is to say, ships constructed or assigned by States specially and solely with the view to assist the wounded, sick and shipwrecked, the names of which have been communicated to the belligerent Powers at the commencement or during the course of hostilities, and in any case before they are employed, shall be respected and cannot be captured while hostilities last.

These ships, moreover, are not on the same footing as men-of-war as regards their stay in a neutral port.

This article is adopted.

### ARTICLE 2

Hospital ships, equipped wholly or in part at the expense of private individuals or officially recognized relief societies, shall likewise be respected and exempt from capture, if the belligerent Power to which they belong has given them an official commission and has notified their names to the hostile Power at the commencement of or during hostilities, and in any case before they are employed.

These ships shall be provided with a certificate from the competent authorities, declaring that they have been under their control while fitting out and on final departure.

This article is adopted.

### ARTICLE 3

Hospital ships, equipped wholly or in part at the expense of private individuals or officially recognized societies of neutral countries, shall be respected and exempt from capture, if the neutral Power to which they belong has given them an official commission and has notified their names to the belligerent Powers at the commencement of or during hostilities, and in any case before they are employed.

This article is adopted.

## SECOND COMMISSION

## ARTICLE 4

The ships mentioned in Articles 1, 2 and 3 shall afford relief and assistance to the wounded, sick, and shipwrecked of the belligerents without distinction of nationality.

The Governments undertake not to use these ships for any military purpose.

These ships must in nowise hamper the movements of the combatants.

During and after an engagement they will act at their own risk and peril.

The belligerents will have the right to control and search them; they can refuse to help them, order them off, make them take a certain course, and put a commissioner on board; they can even detain them, if important circumstances require it.

As far as possible the belligerents shall enter in the log of the hospital ships the orders which they give them.

This article is adopted.

## ARTICLE 5

Military hospital ships shall be distinguished by being painted white outside with a horizontal band of green about a meter and a half in breadth.

The ships mentioned in Articles 2 and 3 shall be distinguished by being painted white outside with a horizontal band of red about a meter and a half in breadth.

The boats of the ships above mentioned, as also small craft which may be used for hospital work, shall be distinguished by similar painting.

All hospital ships shall make themselves known by hoisting, with their national flag, the flag with a red cross provided by the Geneva Convention.

**Mirza Riza Khan** makes the following declaration regarding Article 5:

In regard to the last paragraph of Article 5, and in accordance with instructions which I have just received from Teheran, I am directed to inform the Commission that the Persian Government will ask as a distinctive flag the white flag with a red sun.

The adoption of the red cross as the distinctive flag of hospitals was an act of courtesy on the part of the Governments signing the Geneva Convention, toward the Swiss Federal Government, whose flag was adopted, the colors having been reversed in order to distinguish it from the Swiss national flag.

We should be happy to extend the same courtesy to the honorable Swiss Government if this were not impossible owing to the inquietude it would excite in the Mussulman army.

I beg of the Commission to kindly take note of this declaration by inserting it in the record of the meeting.

The **President** records this declaration of the Persian delegate.

Article 5 is adopted.

## ARTICLE 6

[5] Neutral merchantmen, yachts, or vessels, having, or taking on board, sick, wounded, or shipwrecked of the belligerents, cannot be captured for so doing, but they are liable to capture for any violation of neutrality they may have committed.

This article is adopted.

## ARTICLE 7

The religious, medical, and hospital staff of any captured ship is inviolable, and its members cannot be made prisoners of war. On leaving the ship they take with them the objects and surgical instruments which are their own private property.

This staff shall continue to discharge its duties while necessary, and can afterwards leave when the commander in chief considers it possible.

The belligerents must guarantee to the said staff when it has fallen into their hands the enjoyment of their salaries intact.

This article is adopted.

#### ARTICLE 8

Sailors and soldiers on board when sick or wounded, to whatever nation they belong, shall be protected and tended by the captors.

This article is adopted.

#### ARTICLE 9

The shipwrecked, wounded, or sick of one of the belligerents who fall into the power of the other, are prisoners of war. The captor must decide, according to circumstances, whether to keep them, send them to a port of his own country, to a neutral port, or even to an enemy port. In this last case, prisoners thus repatriated cannot serve again while the war lasts.

This article is adopted.

#### ARTICLE 10

The shipwrecked, wounded or sick who are landed at a neutral port, with the consent of the local authorities, must be guarded by the latter so as to prevent their again taking part in the operations of the war.

The expenses of tending them in hospital and interning them shall be borne by the State to which the shipwrecked, sick or wounded belong.

Mr. Asser says that, as president of the first subcommission, he wishes to give some explanations in regard to the debate on Article 10.

Several objections have been presented against the text proposed. It has been said that Article 10 seems to impose too heavy a burden on neutrals. It has been alleged on the other hand that these provisions were not in harmony with the principles adopted for land warfare.

These observations were embodied in two amendments, one presented by the delegate from Belgium and the other by the delegate from Switzerland. Before putting these amendments to a vote, the President thought he ought first to consult the subcommission as to whether it accepted the text of Article 10 unamended.

This procedure, although not entirely in conformity with parliamentary usages, appeared to him to place the question in the most impartial light. Following this vote, Article 10 unamended was adopted by a majority of one vote. Now among those who were opposed, some would be willing to revise their vote if the text would provide for the case of a contrary understanding being reached between the neutral and belligerent States.

It would seem that this modification ought to satisfy everybody.

Article 10 leaves to the neutral State full freedom to receive the sick and wounded landed in its ports.

In fact, we may believe that a neutral State will never shirk this humane duty, but it is nevertheless well to give it the privilege of explaining itself on this subject with the belligerents at the beginning of the war. If this view is approved,



it would therefore be sufficient to amend the text as follows in order to bring everybody into accord:

#### ARTICLE 10

The shipwrecked, wounded, or sick, who are landed at a neutral port, with the consent of the local authorities, must, unless an arrangement is made to the contrary between the neutral State and the belligerent States, be guarded by the neutral State so as to prevent their again taking part in the operations of the war.

The expenses of tending them in hospital and interning them shall be borne by the State to which the shipwrecked, sick, or wounded belong.

Chevalier **Descamps** asks whether it would not be sufficient to say: "unless there is a contrary declaration."

Mr. **Asser** answers that the use of this expression would imperil the very principles accepted by the majority. It has been said that the neutral States [6] might without fear accept the principle laid down by Article 10, because of the freedom left them of receiving or rejecting the wounded. If we are content with a simple declaration, necessarily one-sided, we shall see the anxieties of the neutrals aroused to the detriment of the cause of the sick and wounded whom we wish to relieve. On the contrary, a two-sided arrangement would safeguard all interests and it was in this spirit that the amendment was framed.

Count **de Grelle Rogier** says that he had formulated in regard to Article 10 some observations which seemed to him to be based on logic and equity. Mr. **ASSER** has just proposed a compromise, and, in a spirit of conciliation, the delegate from Belgium declares himself ready to accept it.

Mr. **Odier** says that he had presented an amendment which had no other object than to facilitate the adoption of the proposition of Mr. **DE GRELLE ROGIER**. This latter proposition being withdrawn, Mr. **ODIER** does not insist on his own suggestion. He wishes, however, to explain the reasons why the proposition of Mr. **ASSER** did not entirely satisfy him. It would seem that if the obligations assumed by a neutral State are to involve too lengthy obligations and too heavy burdens, and if the wounded who have become valueless as far as the war is concerned are kept an indefinite length of time away from their country, this would be somewhat contrary to the idea of humanity.

Mr. **ODIER** adds, however, that in order not to prevent the text of Article 10 from being unanimously approved, he will withdraw his amendment.

Mr. **Corragioni d'Orelli** declares that he indorses the proposition of Mr. **ASSER**.

No further observation being offered, the **President** says that Article 10 is adopted in its new form. (*Applause.*)

Mr. **Odier** says that he wishes to comment upon the declaration made at the beginning of the meeting by the delegate from Persia.

As regards the modifications in the insignia of this convention suggested to the subcommission by Turkey, Siam, and the United States of America and to the plenary Commission by Persia, it does not seem as if the assembly were competent to deal with this question, and it will be when the Geneva Convention is submitted for revision that the question of maintaining or changing its emblem may be properly examined.

**Mirza Riza Khan** answers that as he did not attend the meetings of the first

subcommission, he was unable to make his declaration regarding Article 5 at the same time as the representatives of Turkey, Siam, and the United States.

He therefore thought that he ought to make it known when Article 5 came up for discussion before the plenary Commission. He agrees that the matter of changing the insignia can only be examined by a subsequent conference charged with revising the Geneva Convention, but he nevertheless wishes to have his declaration inserted in the minutes as evidence of the intentions of the Persian Government in regard to the form of the insignia.

The **President** states that everybody agrees as to the incompetency of the Commission to discuss these questions and that they can only be mentioned in the minutes.

Mr. **Rolin** recalls a declaration which he made in the subcommission tending to insure to the Siamese Government the privilege of adding to the flag of the Geneva Convention a sacred sign of the Buddhist religion calculated to enhance the protective authority of this flag.

The **President** says that this declaration will be likewise mentioned in the minutes.

The **PRESIDENT** states that Articles 1 to 10 proposed by the first subcommission are therefore adopted.

Count **de Macedo**, first delegate of Portugal, declares, while requesting the Second Commission to record this declaration and to consider it as a general reservation to the ten articles just read and discussed, that the instructions of his Government being naturally limited to the question of adhesion to the general principles contained in the **MOURAVIEFF** circular, and to the acceptance under an equally general form of the application of these principles, his favorable though silent vote on the doctrine of the aforesaid articles has no final character even within the limits that his powers permit him to vote (that is, *ad referendum*); and that this character cannot be obtained until he receives from the Government of His Most Faithful Majesty instructions given with a full knowledge of the text just voted upon.

The **President** takes note of this declaration of Count **DE MACEDO**.

[7] Mr. **Mahan** reads the following propositions:

It is known to the members of the first subcommission, by whom these articles were accepted, that I have heretofore stated that there was an important omission, which I desired to rectify in an additional article or articles. The omission was to provide against the case of a neutral vessel, such as is mentioned in Article 6, picking up shipwrecked on the scene of a naval battle, and carrying them away, either accidentally or intentionally. What, I asked, is the status of such shipwrecked combatants?

My attention had been absorbed by the case of vessels under Article 6. I have since noticed that there was equally an omission to provide for the status of shipwrecked combatants picked up by hospital ships. In order that non-professional men, men not naval officers, may certainly comprehend this point, allow me to develop it.

On a field of naval battle the ships are constantly in movement; not merely the movement of a land battle, but a movement of progress, of transfer from place to place more or less rapid.

The scene is here one moment; a half-hour later it may be five miles distant.

In such a battle it happens that a ship sinks; her crew become shipwrecked; the place of action shifts; it is no longer where these men are struggling for life; the light cruisers of their own side come to help, but they are not enough; the hospital ships with neutral flags come to help; neutral ships other than hospital ships also arrive; a certain number of shipwrecked combatants are saved on board neutral ships. To which belligerent do these men belong?

It may happen that the neutral vessel, hospital or otherwise, has been with the fleet opposed to the sunken ship.

After fulfilling her work of mercy, she naturally returns to that fleet.

The shipwrecked combatants fall into the power of the enemy, although it is quite probable that the fleet to which they belong may have had the advantage.

I maintain that unless some provision is made to meet this difficulty, much recrimination will arise.

A few private seamen, more or less, a few non-commissioned officers, may not matter, but it is possible that a distinguished general or valued officers of lower grade may be involved.

This will tend to bring into discredit the whole system for hospital ships; but further, while hospital ships, being regularly commissioned by their own Government, may be supposed to act with perfect impartiality, such presupposition is not permissible in the case of vessels named in Article 6.

Unless the status of shipwrecked combatants saved by them is defined, the grossest irregularities may be expected, the notoriety of which will fully repay the class of men who would perpetrate them.

As many cases may arise, all of which it is impossible to meet specifically, I propose the following additional articles based upon the single general principle that shipwrecked combatants, being *ipso facto* combatants *hors de combat*, are incapable of serving again during the war, unless recaptured or until duly exchanged.

These additional articles may have the following tenor:

1. Neutral vessels of any kind, hospital ships or others, being on the scene of a naval engagement, which may, as an act of humanity, save men in peril of drowning from the results of the engagement, shall not be considered as having violated their neutrality by that act alone.

They will, however, in so doing, act at their own risk and peril.

2. In case a war vessel should demand the return of the men thus gathered up, the latter shall not be considered under the cover of the neutral flag, but shall be susceptible of capture and recapture.

If this demand is made, the men in question may be delivered up and shall have the same status as if they had not been under a neutral flag.

3. In case these men, who have thus escaped the consequences of the fight through neutral interposition, should not be demanded by a belligerent ship, they shall be considered as being *out of action*, and shall not serve during the remainder of the war unless duly exchanged. The contracting Govern-

[8] ments who are belligerents engage to prevent these men from serving during the continuance of the war unless exchanged.

At the request of Messrs. ASSER and RENAULT, the **President** says that the examination of the new proposition presented by Mr. MAHAN will be referred to the drafting committee of the first subcommission and will be made the subject of a report by that committee to the plenary Commission.

The **PRESIDENT** recalls the fact that the first subcommission expressed a wish in regard to the revision of the Geneva Convention, and he gives the floor to Mr. **ASSER** in order to explain this wish to the Commission.

Mr. **ASSER** says that the Commission, at the beginning of its labors, brought up the question whether it was competent to discuss a revision of the Geneva Convention. For reasons derived both from law and fact, it did not think it could consider this subject. Nevertheless the first subcommission desired, before separating, to express a wish that the revision might take place in the near future, and it thought that this wish might be presented to the Conference in the following form:

The Hague Conference, taking into consideration the preliminary steps taken by the Swiss Federal Government for the revision of the Geneva Convention, utters the *vœu* that steps may be shortly taken for the assembly of a special Conference having for its object the revision of that Convention.

Mr. **Beldiman** says that he fully indorses the *vœu* presented, but he would like to insert in the text, after the word "shortly," the following: *and under the auspices of the Swiss Federal Council.*

He calls attention to the fact that Switzerland has acquired an imprescriptible title to the gratitude of the civilized world for all that relates to the creation and development of the Red Cross, and it is rendering to it just homage to introduce into the proposed *vœu* the clause just indicated.

The **PRESIDENT** observes that it would be placing a burden on the Swiss Federal Government to decide that it alone is competent to convoke the revision conference. He recalls the fact that in 1892 an International Conference of Red Cross Societies was held at Rome, in which representatives of the Governments signatory to the Convention took part.

This Conference asked the Italian Government to take the initiative in adapting the principles of the Geneva Convention to maritime war. The Swiss Government by no means protested against this decision. Later, in 1896, the Italian Government, while declaring its willingness to comply with the wish of the Conference, asked the Federal Government whether it would like to take in its stead the initiative in this adaptation.

Mr. **MARTENS** concludes from this historical precedent that the Commission ought to confine itself to expressing the *vœu* as submitted to it by Mr. **ASSER**, leaving to the interested Governments the task of agreeing on the time and place of the conference.

Mr. **ASSER** supports this view. He says that the Conference need not express itself formally in regard to the conditions of the revision.

Moreover, it looks to him as if the way in which the *vœu* is formulated and the mention made therein of the *preliminary steps* of the Swiss Federal Government ought to suffice to show that said Government is implicitly recognized as having the right to convoke the revision conference.

Mr. **Odier** says that he fully agrees with Messrs. **MARTENS** and **ASSER** on one point, namely, that the Swiss Government has no monopoly in regard to the convocation of the Conference and that this right belongs equally to every one of the nations signatory to the Geneva Convention. It is true that following the Rome Conference of 1892 the Italian Government consulted the wishes

of the Federal Government in regard to a revision of the Geneva Convention and its adaptation to maritime war.

The Swiss Government agreed to bring about this revision as soon as circumstances should appear favorable.

Now again that Government will be grateful to the Conference if it does it the honor to charge it with the realization of this revision so desired by all.

Mr. ODIER adds that the idea of the Geneva Convention was born in his country and that Switzerland considers to a certain extent that she has a right to and a particular interest in taking the initiative regarding everything relating to the Convention.

She will therefore be very happy if asked to convoke the revision conference on her territory.

[9] Mr. Zorn indorses the amendment of Mr. BELDIMAN. He calls attention to the fact that the Convention not only bears the name of a city of Switzerland, but that it is due to the generous and magnanimous initiative of a Swiss for which reason it must be acknowledged that Switzerland has an incontestable right to take the initiative in resuming the labors connected with this Convention. It is a duty of honor to recognize her as having this right. He heartily supports the words and the amendment of the delegate from Roumania.

Mr. Motono and his Excellency Count Nigra likewise endorse the proposition of Mr. BELDIMAN.

At the request of Count de Macedo, Mr. Beldiman explains that his amendment is by no means for the purpose of excluding the other signatory Powers from the right to convoke the conference, but he merely expresses the wish that this convocation may take place under the auspices of the Swiss Federal Council.

His Excellency Sir Julian Pauncefote asks whether the Commission believes it has competency to formulate *war* in this manner. As to himself, he does not think that it has a right to impose on another Power the formal obligation to take the initiative in regard to the revision of an international act.

The President says that such was indeed his opinion, at least as regards the mandate which it is desired to give to the Federal Government.

Mr. Asser observes again that the wording of the *war* which he presented is sufficient to make it understood that all the members of the Conference would be glad to have the Swiss Federal Council take the initiative in convoking a Conference for the revision of the Geneva Convention.

Mr. Beldiman takes note of the declaration of Mr. ASSER, who said that all the members of the Conference would be glad to have the Federal Council take the initiative in convoking a Conference for the revision of the Geneva Convention, and he considers this declaration as an adhesion to the amendment which he had just formulated.

The President puts to a vote by roll call the amendment presented by Mr. BELDIMAN.

*Voting for* this amendment: Germany, Austria-Hungary, China, Denmark, Spain, Italy, Japan, Luxemburg, Persia, Roumania, Serbia, Siam, Switzerland.

*Voting against:* The United States of America.

*Not voting:* Belgium, France, Great Britain, Greece, Mexico, Montenegro, Netherlands, Portugal, Russia, Sweden and Norway, Turkey, and Bulgaria.

The **President** states the result of the vote as thirteen in favor of the amendment of Mr. BELDIMAN, one against it, and twelve abstentions.

He thinks that under the circumstances he ought to put to a vote the text of the *vanu* as proposed by the subcommission.

The vote takes place by roll call:

*Voting for:* Germany, United States of America, Austria-Hungary, Belgium, China, Denmark, Spain, France, Greece, Italy, Mexico, Montenegro, Netherlands, Persia, Portugal, Russia, Serbia, Siam, Sweden, Switzerland, Turkey, Bulgaria.

*Not voting:* Great Britain, Japan, Luxemburg, Roumania.

The **President** says that the *vanu* presented by the subcommission is adopted, without amendment, by 22 votes and 4 abstentions.

He proposes that the Commission give a vote of thanks to the first subcommission, to its eminent president, and to its very distinguished reporter. (*Applause.*)

The meeting adjourns.

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### Annex to the Minutes of the Meeting of June 20

[10]

#### REPORT PRESENTED BY MR. L. RENAULT

The Second Commission has adopted, on the report of a drafting committee,<sup>1</sup> a series of provisions having for its aim the adaptation of the principles of the Geneva Convention to maritime warfare. It now submits these provisions to the vote of the Conference and accompanies them with this report, which is designed to explain the reasons for the articles proposed.

To the Second Commission (first subcommission) was assigned the duty of examining points 5 and 6 of Count MOURAVIEFF's circular. It has been assumed that it is desirable to adapt the principles of the Geneva Convention of 1864 to maritime wars, and also that it is proper to take the additional articles of 1868 as a basis. The latter articles gave rise to criticism very soon after their signature, and have been for thirty years the subject of a great deal of study. It now becomes necessary to take those criticisms into account, to profit by their discussions, and to decide on some project which will reconcile the interests involved and will also satisfy the hope that has been expressed for so long a time by individuals and societies of the highest eminence that maritime warfare should no longer be deprived of the humanitarian and charitable element which the Geneva Convention has added to war on land. We think that the preparatory work on this subject, so earnestly desired by public opinion, is now sufficiently done and that it is now time to obtain results. We hope that our work will permit the Conference to do this and, with a complete knowledge of the matter, to take action by adopting a text which may be easily transformed into an international convention.

<sup>1</sup> This committee consisted of Vice Admiral FISHER, Captain SCHEINE, Captain SIEGEL, and Professor RENAULT as reporter. Lieutenant Colonel CHARLES A COURT and Lieutenant OVTCHINNIKOW also participated in the work of this committee as associate members.

We have been guided by the following general ideas. In the first place, we confined ourselves to general principles only, and did not enter into details of organization and regulation which are for each State to settle according to its own interests or customs. We determine what the legal status of hospital ships should be in international law; but we do not determine what shall constitute such ships, nor do we distinguish Government vessels from vessels of relief societies, nor do we say whether boats belonging to private individuals may be attached to the hospital service during a war. These are questions which must be handled by the several Governments, because circumstances are so different that a uniform solution cannot be applied. The assistance rendered by private charity will be greater or less, according to the country. Then again, we must not be so preoccupied with the demands of humanity that we are oblivious of the necessities of warfare; we must avoid laying down rules which, even though inspired by sentiments of humanity, are likely to be disregarded often by the combatants as unduly impeding their freedom of action. Humanity gains little by the adoption of a rule that remains a dead letter; and the feeling of respect for engagements is but weakened. It is accordingly indispensable to impose only such obligations as can be fulfilled in all circumstances and to leave to the combatants all the latitude they require. This, it is to be hoped, will not be so used as needlessly to hinder relief work.

The provisions to be decided on fall into three classes: we have to make rules regarding the status, first, of the vessels engaged in relief work (Articles 1 to 6); secondly, of the persons so engaged (Article 7); and thirdly, of the wounded, sick or shipwrecked (Articles 8 and 9).

## VESSELS

There may be, as a matter of fact, vessels of very different kinds engaged in either permanent or casual hospital service.

### MILITARY HOSPITAL SHIPS

At the Geneva Conference of 1868, a variety of opinions existed as to the status that such ships should be given. After allowing them the benefit of neutrality under certain conditions, the ninth additional article was finally adopted, as follows:

The military hospital ships remain under martial law in all that concerns [11] their stores; they become the property of the captor, but the latter must not divert them from their special appropriation during the continuance of the war.

In 1869 the French Government asked that the following provision be added to Article 9:

The vessels not equipped for fighting, which, during peace, the Government shall have officially declared to be intended to serve as floating hospital ships, shall, however, enjoy during the war complete neutrality, both as regards stores, and also as regards their staff, provided their equipment is exclusively appropriated to the special service on which they are employed.

That the British Government supported this view may be seen in the note

addressed to Prince DE LA TOUR D'AUVERGNE by Count CLARENDON, January 21, 1869.

The Commission has expressed itself as in favor of the plan proposed in 1869, although it is of the opinion that a single general rule can be formulated to take the place of Article 9 with the additional provision just quoted. It has seemed indispensable to remove the ships under consideration from exposure to the vicissitudes of warfare, and at the same time to take precaution against the commission of abuses.

The Commission accordingly proposes to exempt from capture ships *constructed or assigned by States specially and solely with a view to assist the wounded, sick and shipwrecked*. Each State will construct or assign as it sees fit the ships intended for hospital service; no particular type of vessel should be required of it. The essential point is that the ships shall have no other character than that of hospital ships, and consequently cannot carry anything that is not intended for the sick or wounded and those caring for them, and that might be used for acts of hostility.

As each belligerent ought to know what ships of his adversary are accorded particular immunities, the names of these must be communicated officially. When should this communication be made? Naturally at the very beginning of hostilities. But it would be too stringent a rule to accept only notifications made at that time. A belligerent may have been taken unawares by war and not have hospital ships already constructed or assigned; or the war might take on such great proportions that the existing hospital ships would be deemed insufficient. Would it not be cruel to refuse belligerents the privilege of augmenting their hospital service to meet the needs of the war, and consequently of fitting up new ships? This is admitted. Notification may then be made even during the course of hostilities, but it is to precede the employment of the ship in its new service.

This notification of the names of military hospital ships interests primarily the belligerents; it may also be of interest to neutrals since, as will be explained, a special status is enjoyed by such ships in neutral ports. It is accordingly desirable that the belligerents acquaint neutral States with the names of these vessels, even if only by publication in their official journals.

The assignment of a vessel to hospital service cannot of course, after such notification to the adversary, be changed while the war lasts. Otherwise, abuses would be possible; as, for instance, a hospital ship might thus be enabled to reach a given destination and then might be transformed into a vessel designed to take part in hostilities.

In defining the immunity granted military hospital ships, we have avoided the words "neutrals" and "neutrality," which are in themselves inexact and have long given rise to just criticism, as was seen in the subcommission. We propose saying simply that these vessels "shall be respected and cannot be captured." In this way we state concretely and precisely the two principal consequences understood to flow from the abstract idea of neutrality. These ships must not be attacked. Their character as hospital ships is to protect them from being made the object of measures employed against ships of war, just as ambulances and military hospitals are respected by belligerents under Article 1 of the Convention of 1864. The respect thus assured hospital ships does not preclude, as we shall show later in speaking of Article 4, such precautionary measures as may be necessary.



Again, military hospital ships are not to be subjected to the law of prize that naturally applies to all ships of the enemy. Here we have in the higher interests of humanity common to the belligerents a renunciation of an incontestable right.

What has been said has only to do with the relations between belligerents. In such relations a special status is created for military hospital ships, and they are not treated as hostile ships of war. But it has seemed necessary [12] to extend the same principle to the relations between these vessels and neutral ports, for otherwise the authorities of those ports might class the hospital ships with the naval vessels of the belligerent to which they belong, and so place their stay, revictualing, and departure under the same strict rules as are imposed upon men-of-war. This would not be reasonable. We must have a precise rule both to avoid any difficulty between hospital ships and neutral port authorities as well as any complaint on the part of belligerents. Apart from this, these military hospital ships will naturally be treated like men-of-war, notably with respect to the advantage of extraterritoriality. The status of military hospital ships might therefore be regulated as follows:

#### ARTICLE 1

Military hospital ships, that is to say, ships constructed or assigned by States specially and solely with a view to assist the wounded, sick and shipwrecked, the names of which have been communicated to the belligerent Powers at the commencement or during the course of hostilities, and in any case before they are employed, shall be respected and cannot be captured while hostilities last.

These ships, moreover, are not on the same footing as men-of-war as regards their stay in a neutral port.

#### HOSPITAL SHIPS OF BELLIGERENTS, OTHER THAN GOVERNMENT VESSELS

The thirteenth additional article of 1868 deals with hospital ships that are equipped at the expense of relief societies. We preserve the provision as regards them with a few modifications. The societies meant are those officially recognized by each belligerent; the expression used in Article 13 is too vague and at the same time ambiguous. The word "neutral," used therein to define the status of these vessels, is avoided for the reasons given in connection with the preceding article.

Finally, the same notification from belligerent to belligerent is prescribed as for military hospital ships, and for the same reasons.

The provision of Article 13 has been supplemented in a useful way by granting to boats which individuals may wish to devote to the hospital service the same immunity from the moment they present the same guaranties. This may be a valuable resource, for in several countries owners of pleasure yachts have expressed their intention of devoting them to the hospital service in time of war.

#### ARTICLE 2

Hospital ships, equipped wholly or in part at the expense of private individuals or officially recognized relief societies, shall likewise be respected and exempt from capture, if the belligerent Power to which they belong has given them an official commission and has notified their names to the hostile Power at the commencement of or during hostilities, and in any case before they are employed.

These ships shall be provided with a certificate from the competent authorities, declaring that they had been under their control while fitting out and on final departure.

### NEUTRAL HOSPITAL SHIPS

The future will tell whether neutral relief work will take place in naval wars and if so to what extent. We confine ourselves to saying that it is proper under conditions that appear to carry satisfactory guaranties. Such relief vessels must be furnished by their Government with an official commission which shall only be granted upon knowledge of the exclusively hospital character of the vessels and their names must be made known to the belligerent Powers.

There was some thought of requiring neutral hospital ships to place themselves under the direct authority of one or other of the belligerents, but careful study has convinced us that this would lead to serious difficulties. What flag would these ships fly? Would it not be somewhat inconsistent with the concept of neutrality for a ship with an official commission to be incorporated in the navy of one of the belligerents? It seemed to us sufficient to have these vessels, which are primarily under the control of the Government from which they have received their commissions, subjected to the authority of the belligerents to the extent provided in Article 4 below.

### ARTICLE 3

Hospital ships, equipped wholly or in part at the expense of private individuals or officially recognized societies of neutral countries, shall be respected and exempt from capture, if the neutral Power to which they belong has given them an official commission, and has notified their names to the belligerent Powers at the commencement of or during hostilities, and in any case before they are employed.

### RULES COMMON TO HOSPITAL SHIPS

The immunity granted to the ships just spoken of is not based on their own interests but on the interests of the victims of war to whom they [13] purpose carrying relief; and these interests, however worthy of respect, must not cause us to lose sight of the purpose of warfare. This twofold idea explains two series of provisions.

In the first place the humanitarian purpose must not be entirely selfish. The ships in question should offer their assistance to the victims of war without distinction as to nationality. This does not apply alone to neutral ships which, for example, give charitable aid to both parties; it applies with equal force to the vessels of the belligerents. In this way the immunity which is granted them finds its justification. Each belligerent yields up the right of capturing vessels of this description belonging to its adversary, and this renunciation is prompted both by a charitable motive and by a well-understood self-interest, since when an opportunity arises these vessels will render service to their own sailors as well as to those of the enemy.

It must be perfectly understood that these vessels are not to serve any other purpose, that they cannot under any pretext be directly or indirectly employed to further any military operation: as gathering information, carrying dispatches, or transporting troops, arms, or munitions. The contracting Governments in signing the proposed convention engage their honor in this sense. It would be perfidy to disregard it.

While holding scrupulously to their charitable rôle, hospital ships must in no way hamper the movements of the belligerents. The latter can demand, accept, or refuse their help. They may order them to move off and in so doing they may determine in what direction they shall go. In the latter case it may sometimes seem necessary to put a commissioner on board to ensure complete execution of the orders given. Finally, in particularly serious circumstances the rights of the belligerents may go to the length of detaining hospital ships; as for instance when necessary to preserve absolute secrecy of operations.

In order to obviate disputes respecting the existence or the meaning of an order it is desirable that the belligerent should record the order on the log of the hospital ship. This, however, may not always be possible; the condition of the sea or extreme urgency may preclude this formality; and so its performance ought not to be absolutely requisite. The hospital ship would not be permitted to invoke the absence of such a record from its log in order to justify it in disregarding the orders received, if these orders could be proved in another way.

It has sometimes been proposed to fix upon special signals for ships asking for relief and for hospital ships offering it. The Commission believes that no special provision is necessary on this point, that the *international signal code* as adopted by all navies is sufficient for the end in view.

Finally, it goes without saying that the belligerents should have the right to control and search all hospital ships without exception. They must be able to convince themselves that no abuse is committed and that these ships are in no way diverted from their charitable commission. The right of search is here the necessary counterpart of their immunity and it should not be surprising to see it applied even to Government vessels. These vessels would be searched and captured if left under the *régime* of the common law; search therefore does not injure their situation; it is merely a condition of the more favorable status granted them.

It is proper to observe that searching hospital ships is important not only to see that these vessels do not depart from their rôle, but also to ascertain the condition of the wounded, sick, or shipwrecked who may be on board, as will be hereafter explained in connection with Article 9.

The provisions here reproduced are almost textually borrowed from paragraphs 4, 5, 6 and 7 of the thirteenth additional article; we have merely extended them to all hospital ships without distinction inasmuch as we grant immunities to all ships.

#### ARTICLE 4

The ships mentioned in Articles 1, 2 and 3 shall afford relief and assistance to the wounded, sick, and shipwrecked of the belligerents without distinction of nationality.

The Governments undertake not to use these ships for any military purpose.

These ships must in nowise hamper the movements of the combatants.

During and after an engagement they will act at their own risk and peril.

The belligerents will have the right to control and search them; they can refuse to help them, order them off, make them take a certain course, and put a commissioner on board; they can even detain them, if important circumstances require it.

[14] As far as possible the belligerents shall enter in the log of the hospital ships the orders which they give them.

## DISTINCTIVE SIGNS OF HOSPITAL SHIPS

Hospital ships ought to make their character known in an unmistakable manner; they have the greatest interest in so doing. We have taken the provisions of paragraph 3 of the twelfth additional article and paragraph 3 of Article 13, slightly modifying the wording which is no longer suitable for vessels of the present day.

All vessels devoted exclusively to hospital service are to have a band of green or red of the breadth indicated. As this might be impossible for their boats as well as for yachts or small craft which may be used for hospital work, these shall be similarly banded in such proportions as their dimensions permit.

These vessels shall make themselves known by hoisting their own flag together with the white flag with the red cross provided by the Geneva Convention. The rule which is laid down for us by that Convention applies to all hospital ships whether enemy or neutral. The difficulty raised in the case of the latter is done away, as is explained above in connection with Article 3.

## ARTICLE 5

Military hospital ships shall be distinguished by being painted white outside with a horizontal band of green about a meter and a half in breadth.

The ships mentioned in Articles 2 and 3 shall be distinguished by being painted white outside with a horizontal band of red about a meter and a half in breadth.

The boats of the ships above mentioned, as also small craft which may be used for hospital work, shall be distinguished by similar painting.

All hospital ships shall make themselves known by hoisting, with their national flag, the white flag with a red cross provided by the Geneva Convention.

## NEUTRAL MERCHANT VESSELS

We have to do here with neutral vessels that happen for the time being to be transporting shipwrecked, wounded, or sick, whether they have been specially chartered to do so or have chanced to be in a position to receive these victims of warfare. Strictly under the law, such vessels carrying the wounded, sick, or shipwrecked of one belligerent could, on meeting a war-ship of the other belligerent, be considered fair prize for helping the Power whose nationals they were carrying. But every one is agreed that this harsh consequence should be prevented, and that these vessels should not suffer punishment for their charitable aid, but should be left their freedom. Here we see emphasized the advantage of avoiding the term "neutrality" in describing the immunity from capture granted to certain ships: for otherwise we should have to use a very strange form of speech in declaring that the "neutral" ships of which we are speaking are "neutralized."

On the other hand, these vessels cannot rely on the charitable cooperation they extend to escape the consequences of unneutral service. Such a case would be presented if they carried contraband of war, or if they violated a blockade. They would be liable to the usual consequence of such acts.

In brief, a neutral ship does not alter its status as a neutral one way or another by carrying wounded, sick, or shipwrecked. Probably this is what was meant by the second paragraph of additional Article 10, but the phraseology employed was not clear, and, as we know, the British Government sought an explanation. The provision which we now submit is in harmony with juridical

principles and with the interpretation agreed upon between the British and French Governments in 1869.<sup>1</sup>

#### ARTICLE 6

Neutral merchantmen, yachts, or vessels, having, or taking on board, sick, wounded, or shipwrecked of the belligerents, cannot be captured for so doing, but they are liable to capture for any violation of neutrality they may have committed.

It will be noticed that we are not proposing any article covering the case where a merchant vessel of one of the belligerents is carrying sick or wounded. In the absence of such a provision the common law prevails and the vessel is, consequently, exposed to capture. This seems logical and correct in principle. Paragraph one of the tenth additional article allows the ship, if charged *exclusively* with removal of sick and wounded, to be "protected by neutrality"; it would not be so where there were passengers and goods besides the sick and wounded. We have not deemed this a proper distinction.

Similarly, the Commission does not propose for adoption any text corresponding to the sixth additional article, as the case provided therein seemed included in those already dealt with and accordingly to require no special mention. That article deals with boats which at their own risk and peril, during and after an engagement, pick up the shipwrecked or wounded, or which having picked them up, convey them on board a neutral or hospital ship. If these boats belong to the neutral or hospital ship, they have the same character as their ship; they cannot be captured under the rules already laid down. If, on the other hand, they belong to a war-ship or merchantman of one of the belligerents, they may be captured by the other belligerent. No special circumstance appears to exist in their case to remove them from the application of the principles already stated, which appear to us to cover all probable cases. We have thus dealt with the sixth point of Count MOURAVIEFF'S circular.

#### THE MEDICAL PERSONNEL

There is no need, theoretically, to concern ourselves with the medical personnel on board a hospital ship; as the ship itself is respected, the personnel it carries will not be disturbed in the discharge of duty. But the case will be different with a war vessel that falls into the power of the enemy and has on board a medical staff; we may also imagine an enemy merchantman carrying sick and wounded with physicians and nurses to care for them. It would be well to decide, by analogy with land warfare, that whenever a ship is captured, the medical personnel thereon shall be *inviolable*, or in other words, shall not be made prisoners of war. The terms "neutral" and "neutrality" should be eschewed in speaking of persons as well as of ships.

The personnel should continue to perform their functions so far as necessary. Possibly the victor may not have at his disposal a sufficient number of physicians and nurses to take care of the sick who have fallen into his power.

It is well to lay down the principle that the medical personnel in the hands of the enemy are not prisoners of war, but not to say just when they will have the right to leave. This point must be left to the discretion of the commander

<sup>1</sup> Letter of the Earl of CLARENDON of January 21, 1869, and reply of Prince DE LA TOUR D'AUVERGNE of the following February 26th.

in chief, as circumstances vary and do not well lend themselves to precise regulations. The commander, of course, must be imbued with the knowledge that he has no right to detain them arbitrarily, since they are not prisoners of war.

Lastly, we must ensure that this personnel be paid for the time during which they are detained with the enemy.

We may have some hesitation as to the amount of this pay. Shall it be what the physicians who are detained had in their own army, or what physicians of the same grade in the enemy's army receive? The stricter view is that it should be only the lower figure. It has, however, seemed simpler and fairer to allow the physicians the enjoyment of their salaries intact, without entering into details about salaries prevailing with the belligerent in whose hands the physicians are.

The text proposed below is taken from the seventh and eighth additional articles, which have been changed in but a few points.

#### ARTICLE 7

The religious, medical, and hospital staff of any captured ship is inviolable, and its members cannot be made prisoners of war. On leaving the ship they take with them the objects and surgical instruments which are their own private property.

This staff shall continue to discharge its duties while necessary, and can afterwards leave when the commander in chief considers it possible.

The belligerents must guarantee to the said staff when it has fallen into their hands the enjoyment of their salaries intact.

### WOUNDED, SICK, OR SHIPWRECKED

The general fundamental principle of the Geneva Convention, which is that there exists an obligation to give succor to the victims of military operations, is one that should be applied alike to war on land and war on sea. This idea has been given application in connection with hospital ships (see Article 4, paragraph 1). It also finds expression in the first paragraph of additional Article 11 (our Article 8).

[16]

#### ARTICLE 8

Sailors and soldiers on board when sick or wounded, to whatever nation they belong, shall be protected and tended by the captors.

In the provision submitted to the Conference by the Commission, we have spoken of wounded, sick, and shipwrecked, not of victims of maritime warfare. The latter expression, although generally accurate, would not always be so, and therefore should not appear. The rules set forth are to be applied from the moment that there are wounded and sick on board sea-going vessels, it being immaterial where the wound was given or the sickness contracted, whether on land or at sea. Consequently, if a vessel's duty is to carry by sea the wounded or sick of land forces, this vessel and these sick and wounded come under the provisions of our project. On the other hand, it is clear that if sick or wounded sailors are disembarked and placed in an ambulance or a hospital, the Geneva Convention applies to them in all respects.

As this observation seems to us to respond fully to the remarks made in the subcommission on this point, we think it unnecessary to insert any provision dealing especially with it.

The status to be given the wounded, sick and shipwrecked has given rise to considerable controversy and even to the somewhat confused rules of the additional articles. See Article 6, paragraph 3; Article 10, paragraph 1; Article 11, paragraph 2; and Article 13, paragraph 8. It seemed to the Commission that the difficulty arose mainly out of the fact that the very simple general principle to be applied to the different cases had been lost sight of. This principle is as follows: a belligerent has in his power hostile combatants, and these combatants are his prisoners. It matters little that they are wounded, sick, or shipwrecked, or that they have been taken on board a vessel of any particular kind. These circumstances do not affect their legal status. This is the governing principle, and its application is not always consistent with the articles of 1868. A belligerent's hospital ship takes on board the sick, wounded, or shipwrecked of its own nationality and carries them to a port of its own country; why should not these be as unrestrained as those who are picked up by an ambulance? The last paragraph of the thirteenth additional article says, however, that the wounded and shipwrecked taken on board hospital ships cannot serve again during the war.

If we suppose that the same hospital ship, with sick, wounded, or shipwrecked of its own nationality on board, meets a cruiser of the enemy, why would not the latter be justified in considering as prisoners of war the combatants thus coming into its power? There are some among the combatants, such as the sick and wounded, who have a right to special treatment, and towards whom the captor has certain duties; they are none the less all prisoners of war. The additional articles admit this to the extent of making such combatants incapable of further service in the war (Article 10, paragraph 1, and Article 13, towards the end). But this provision does not offer a sufficient guaranty.

The cruiser therefore remains free to act according to circumstances; it may keep the prisoners, or send them to a port of its own country, or to a neutral port, or, in case of need, when there is no other port near, to one of the enemy's ports. It will also take the last-mentioned course when there are only sick or wounded whose condition is serious. It will not be interested in burdening itself or its own country with the sick and wounded of the enemy. It will therefore generally be the case that hospital ships or others having sick and wounded will not be diverted from their destination. Both humanity and the interest of the belligerent will enjoin this course. But the right of the belligerent cannot be ignored. The wounded or sick who are thus returned to their own country cannot serve during the continuance of the war. It is unnecessary to add that if they should be exchanged their status as prisoners of war at liberty on parole would cease, and they would resume their freedom of action.

#### ARTICLE 9

The shipwrecked, wounded, or sick of one of the belligerents who fall into the power of the other, are prisoners of war. The captor must decide, according to circumstances, whether to keep them, send them to a port of his own country, to a neutral port, or even to an enemy port. In this last case, prisoners thus repatriated cannot serve again while the war lasts.

The last provision remaining to be spoken of has no corresponding one in the additional articles. It deals with the case of the shipwrecked, wounded, or sick who are landed in a neutral port. This case must be provided for, both

because it will naturally happen quite frequently and may, in the absence of a precise rule, give rise to difficulties. Of course a neutral Government is [17] not bound to receive within its territory the sick, wounded, or shipwrecked.

Can it do so even, without failing in the duties of neutrality? The doubt arises from the fact that in certain cases a belligerent will often court danger in getting rid of the sick and wounded who encumber him and hamper him in his operations; the neutral territory will thus help him to execute his hostile enterprise better. Nevertheless, it has seemed that considerations of humanity ought to prevail here. In most cases the disembarkment of the sick and wounded picked up, for instance, by hospital ships or merchantmen would be purely an act of charity, and if this were not done the suffering of the sick and wounded would be needlessly aggravated by prolonging the passage so as to reach a port of their own nation. It may happen too that the wounded and the sick thus landed will belong to both belligerents. The neutral State which has consented to the disembarkment is obliged to take the necessary measures to the end that his territory may serve the victims of the war only as an asylum and that the individuals thus harbored shall not be able to take part in the hostilities again. This is an important point, especially in the case of the shipwrecked.

Lastly, it is clear that the expenses occasioned by the presence of these sick, wounded, or shipwrecked ought not to be borne eventually by the neutral State. They should be refunded by the State to which the individuals belong.

#### ARTICLE 10

The shipwrecked, wounded, or sick, who are landed at a neutral port, with the consent of the local authorities, must be guarded by the neutral States so as to prevent their again taking part in the operations of the war.

The expenses of tending them in hospital and internment shall be borne by the State to which the shipwrecked, sick or wounded belong.

The Commission does not offer any provision corresponding to additional Article 14. It was agreed without debate that this article should be dropped. Doubtless it may unfortunately happen that the rules laid down, if made obligatory, will not always be obeyed, and that more or less serious abuses will be committed. Such regrettable acts will entail the ordinary penalties of the law of nations; they cannot be prevented by a special provision which would be of a nature to weaken the legal and moral force of the preceding rules.

### Text Submitted to the Conference

#### ARTICLE 1

Military hospital ships, that is to say, ships constructed or assigned by States specially and solely with the view to assist the wounded, sick and shipwrecked, the names of which have been communicated to the belligerent Powers at the commencement or during the course of hostilities, and in any case before they are employed, shall be respected and cannot be captured while hostilities last.

These ships, moreover, are not on the same footing as men-of-war as regards their stay in a neutral port.



## ARTICLE 2

Hospital ships, equipped wholly or in part at the expense of private individuals or officially recognized relief societies, shall likewise be respected and exempt from capture, if the belligerent Power to which they belong has given them an official commission and has notified their names to the hostile Power at the commencement of or during hostilities, and in any case before they are employed.

These ships shall be provided with a certificate from the competent authorities, declaring that they had been under their control while fitting out and on final departure.

## ARTICLE 3

Hospital ships, equipped wholly or in part at the expense of private individuals or officially recognized societies of neutral countries, shall be respected and exempt from capture, if the neutral Power to which they belong has given them an official commission and has notified their names to the belligerent Powers at the commencement of or during hostilities, and in any case before they are employed.

## ARTICLE 4

[18] The ships mentioned in Articles 1, 2 and 3 shall afford relief and assistance to the wounded, sick, and shipwrecked of the belligerents without distinction of nationality.

The Governments undertake not to use these ships for any military purpose.

These ships must in nowise hamper the movements of the combatants.

During and after an engagement they will act at their own risk and peril.

The belligerents will have the right to control and search them; they can refuse to help them, order them off, make them take a certain course, and put a commissioner on board; they can even detain them, if important circumstances require it.

As far as possible the belligerents shall enter in the log of the hospital ships the orders which they give them.

## ARTICLE 5

Military hospital ships shall be distinguished by being painted white outside with a horizontal band of green about a meter and a half in breadth.

The ships mentioned in Articles 2 and 3 shall be distinguished by being painted white outside with a horizontal band of red about a meter and a half in breadth.

The boats of the ships above mentioned, as also small craft which may be used for hospital work, shall be distinguished by similar painting.

All hospital ships shall make themselves known by hoisting, with their national flag, the white flag with a red cross provided by the Geneva Convention.

## ARTICLE 6

Neutral merchantmen, yachts, or vessels, having, or taking on board, sick, wounded, or shipwrecked of the belligerents, cannot be captured for so doing, but they are liable to capture for any violation of neutrality they may have committed.

## ARTICLE 7

The religious, medical, and hospital staff of any captured ship is inviolable, and its members cannot be made prisoners of war. On leaving the ship they take with them the objects and surgical instruments which are their own private property.

This staff shall continue to discharge its duties while necessary, and can afterwards leave when the commander in chief considers it possible.

The belligerents must guarantee to the said staff when it has fallen into their hands the enjoyment of their salaries intact.

## ARTICLE 8

Sailors and soldiers on board when sick or wounded, to whatever nation they belong, shall be protected and tended by the captors.

## ARTICLE 9

The shipwrecked, wounded, or sick of one of the belligerents who fall into the power of the other, are prisoners of war. The captor must decide, according to circumstances, whether to keep them, send them to a port of his own country, to a neutral port, or even to an enemy port. In this last case, prisoners thus repatriated cannot serve again while the war lasts.

## ARTICLE 10

The shipwrecked, wounded, or sick, who are landed at a neutral port, with the consent of the local authorities, must, unless an arrangement is made to the contrary between the neutral State and the belligerent States, be guarded by the neutral State so as to prevent their again taking part in the operations of the war.

The expenses of tending them in a hospital and interning them shall be borne by the State to which the shipwrecked, sick, or wounded belong.

## FOURTH MEETING

JULY 5, 1899

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**Mr. Martens** presiding.

The minutes of the meeting of June 20 are read.

Captain **Mahan** expresses a desire to change the negative vote which he expressed at the above-mentioned meeting, instructions which he has received subsequently from his Government directing him to vote in favor of the amendment of Mr. **Beldiman** with regard to the revision of the Geneva Convention at the initiative of the Swiss Federal Government.

[19] Mr. **Beldiman** observes that this modification changes the result of the vote in regard to his proposition.

Taking into account the change in question, there would be fourteen affirmative votes and a few abstentions.

However, even without this modification there is reason for taking the vote again.

As a matter of fact, to count abstentions as negative votes could not be considered as being in conformity with parliamentary usage, nor with the mode of procedure observed hitherto in this Conference.

However, as it is desirable above all to secure unanimity, he does not insist either on the rectification of the vote or on the maintenance of his amendment.

He makes a new proposition: to annul the two preceding votes and unanimously adopt the *vanu* expressed by President **ASSER** at the close of the last meeting of the first subcommission, couched in the following terms:

The Hague Conference, taking into consideration the preliminary steps taken by the Swiss Federal Government for the revision of the Geneva Convention, utters the *vanu* that steps may be shortly taken for the assembly of a special Conference having for its object the revision of that Convention.

In the hope of winning the consent of all the members, he makes also the following motion:

In expressing the *vanu* with regard to the revision of the Geneva Convention, the Second Commission adheres fully to the declaration made by Mr. **ASSER**, President of the first subcommission, at the meeting of June 20 and by which the delegate from the Netherlands stated that all the States represented at The Hague would be glad to have the Swiss Federal Council take the initiative, in the near future, in convoking a conference with a view to revising the Geneva Convention.

If this motion were not unanimously carried, he would recover his freedom of action.

The only purpose of the proposition is to avoid roll calls and decisions reached by a majority of votes.

The two propositions concerning the annulment of the previous votes and the adoption of the *vanu* expressed by Mr. ASSER are approved.

The motion of Mr. BELDIMAN is seconded by Mr. MOTONO.

His Excellency Mr. **White** declares that the original vote of the United States in the subcommission was the result of a misunderstanding.

The American Government has the most earnest desire to do justice to Switzerland, which took the initiative in this great humane work and which developed the idea thereof.

It will therefore vote for the proposition of the delegate from Roumania.

The **President** defines the purport of the motion of Mr. BELDIMAN. It will not in any wise affect the freedom of action of the Governments; the latter will have the privilege of giving to the Swiss Government an answer based on their personal views and their interests.

His Excellency Sir **Julian Pauncefote** wishes to state that it is therefore not a question of a mandate given to Switzerland.

The **President** indorses this view.

The motion of Mr. BELDIMAN is unanimously adopted with this reservation.

Mr. **Beldiman** says that it is understood that it will be submitted to the Conference in plenary session.

The minutes of the meeting of June 20 are adopted.

The **President** has the minutes of the meeting of July 1 of the second subcommission read.

They are adopted without modification.

The **PRESIDENT** declares that as the present meeting of the Commission is the last the minutes thereof will be communicated in the form of proof sheets to all the members, who shall indicate the rectifications which they desire to see inserted therein.

This mode of procedure is adopted.

The report on the "draft regulations concerning the laws and customs of war on land," presented by Mr. **ROLIN** on behalf of the second subcommission, is adopted after a statement by the reporter of some modifications of form or additions by means of which he has been able to do justice at once to the observations which have reached him since the last meeting of the subcommission.

The examination of the articles of the draft voted by the second subcommission at its second meeting is now taken up.

With a view to accelerating the progress of the work it is decided on motion of the **PRESIDENT** to vote chapter by chapter.

[20] Chapters I, II, and III of the first section are adopted without modification.

The five chapters of the second section are likewise adopted without modification.

In regard to Article 25, his Excellency Count **Nigra**, according to instructions which he has received, proposes to add the word *ports* to the words "towns, etc."

He acknowledges that it is only a question of regulating land warfare; now, the bombardment of a port by an army comes within this domain. Moreover, he thinks that the time is opportune to decide whether the provisions of Article 25 should not likewise govern bombardments made by naval forces.

Mr. **Rolin** sees no objection to the word "ports" being added, provided it is a question only of a bombardment by land forces; but the addition appears superfluous to him, for a port always comes within the category of "towns, villages, dwellings or buildings" and the addition in question might cause ambiguity.

His Excellency Count **Nigra** takes note of this declaration and asks that it be inserted in the minutes.

As regards the second question raised by his Excellency Count **NIGRA**, Mr. **Rolin** observes that, in the opinion of the subcommission, it comes within the jurisdiction of the full Commission; the latter should therefore adopt a special provision.

Up to the present no proposition of this kind has been made.

His Excellency Count **Nigra** declares that he embraces the opportunity to formulate one.

He proposes that Article 25 be likewise applicable to bombardments directed toward land by naval forces.

Mr. **Rolin** sees an objection to the motion of Count **NIGRA**. A naval force may be led to bombard towns or ports even if they are undefended, particularly for the purpose of compelling them to furnish it provisions, coal or other supplies which it has demanded of them. A land force would have neither ground nor excuse to do so. But a naval force has no other means of exercising its authority, whereas a land force has the resource of occupation, and bombards only for the purpose of enforcing surrender.

The reasons are therefore not the same for the two kinds of bombardment.

We might confine ourselves to stating that bombardment by fleet is not permitted for the sole purpose of terrorizing the inhabitants or uselessly destroying property.

His Excellency Count **Nigra** simply asks that the Commission pass on the following question:

Can the provisions of Article 25 likewise be applied to bombardments made by naval forces?

General **den Beer Poortgael** will not admit that identical rules cannot govern both land and naval warfare. He refers to the *Annuaire* of the Institute of International Law for the Venice session, where it was decided that the rules of land warfare should be applicable to maritime wars.

In his opinion the question is one of capital importance. Nevertheless, he does not consider the time opportune to discuss it; he simply desires to call it to the attention of the Commission in the hope that it will be examined more closely at a subsequent conference.

Mr. **Rolin** thinks that he disagrees with the previous speaker only on a question of words, for the resolution of the Institute of International Law mentioned by him, after stating that the same rules are applicable, points out the exceptions to said rule.

Mr. **Beldiman** indorses the conclusions of his Excellency Count **NIGRA** and hopes that the Commission will enter into explanations on the question.

The **President** recalls the fact that the drafting committee, although having no instructions to deal with this matter, has exchanged some views on the subject.

In the unanimous opinion of its members the question of the bombardment of ports is one of the most complex.

He personally reminded the committee of the deliberations of the Venice session.

Upon examining the rules which were formulated there, it will be seen that they are very complicated.

After labors which lasted several years, the Institute was able to reach only a compromise, because the condition of towns in the interior of countries is different from the condition of those situated on the coast.

The former may be bombarded only for the purpose of compelling them to surrender, while the latter may also be bombarded in order to compel them to furnish provisions to the naval forces threatening them.

And even these rules give rise to misunderstandings and ambiguities.

Along this line of ideas, the **PRESIDENT** proposes to leave intact the text [21] of Article 25, and to offer a resolution recommending that this subject be examined by a conference to be held later. This will be the only way of getting out of this complex question.

His Excellency Count **Nigra** and Mr. **Beldiman** agree with this view.

His Excellency Sir **Julian Pauncefote** cannot join in the expression of the *vœu*, for, as was declared previously by Sir **JOHN ARDAGH**, the British Government cannot consent to accede to the Brussels articles unless naval questions are left out of the deliberations. He does not wish to broach the fundamental substance of the question, but he declares that for the reason indicated, it is impossible for him to endorse the proposition of the **PRESIDENT**.

The **President** observes that the *vœu* in question is but the expression of a desire which involves no pledge.

His Excellency Sir **Julian Pauncefote** abstains and asks that note be taken of his abstention in the minutes.

The proposition of the **PRESIDENT** is adopted unanimously, except that the delegate from Great Britain abstains.

As to Article 33, Mr. **Rolin** remarks that the drafting committee has modified the second paragraph of the text adopted on the second reading by changing "in order to prevent" into "to prevent." This modification is approved.

Section III is adopted.

Article 46 gives rise to the following discussion:

The **President** calls attention to the letter which the United States delegation addressed to the President of the Conference in regard to the inviolability of private property at sea in time of war.

He is happy to state that as early as 1823 Russia expressed her sympathy for this idea.

It is entitled to the benevolent interest of everybody; but will it be possible to discuss this important question here? If this inviolability is admitted, maritime nations will have to change radically their plans and projects. The question is so complex that it will be very difficult under present circumstances to find a solution acceptable to all. Now, a decision would be of no value unless unanimously adopted.

He therefore proposes to refer the examination of this question also to a subsequent conference better prepared to solve it and to work out a project which might enlist the votes of all.

If the Commission adopts this proposition, it will have shown evidence of

prudence while at the same time doing homage to the generous initiative of the United States.

His Excellency Sir **Julian Pauncefote** proposes to put to a vote the question whether this matter comes within the sphere of the work of the Conference.

His Government is of the opinion that it does not.

According to his Excellency Mr. **White**, it appeared to the United States delegation that the Conference is just as competent to examine this question as many others which have been solved here.

He would keenly regret to see it eliminated so radically. He agrees with the **PRESIDENT** that the time is not favorable to discuss this subject although it interests all the Powers assembled here.

The best solution, in his opinion, would be to submit the question to the Conference assembled in plenary session, which will decide whether it is proper to discuss it now or to entrust its examination to a subsequent conference.

And, if it is not wished to go any further, even this latter solution will be supported by the United States delegation.

The latter does not wish to cause any discord which would be detrimental to the results attained on other very important questions; it wishes merely to see this proposition, which was made in good faith, submitted to the Conference in plenary session. There, it will not oppose referring the question to a subsequent conference.

Mr. **Rahusen**, without wishing to enter into the merits of the case, will make two observations:

1. He endorses the ideas of his Excellency Mr. **White** as regards the question of competency.

The Conference takes up the question of private property on land. Why might it not likewise examine the question of private property at sea?

And, moreover, for what reason should they be treated differently?

2. He suggests the idea of having the Governments favoring the idea of inviolability bind themselves together by special treaties.

A precedent has already been created by some Italian treaties of commerce.

The **President** observes that the second Commission has received instructions [22] from the subcommission to deal with this question; these instructions were backed by Mr. **CROZIER**. It must therefore pass on the question whether it wishes to have the examination of the subject referred to a subsequent conference. The Conference may or may not approve the decision which has been reached by the Commission. But at all events the latter constitutes an intermediate jurisdiction between the subcommission and the Conference, and as such it ought to make its opinion known.

His Excellency Sir **JULIAN PAUNCEFOTE** has nevertheless raised the important previous question of competency. This question will have to be decided.

Mr. **Scheine** observes that the Conference has thus far dealt only with the laws of land warfare. The instructions which he has received from his Government in no wise relate to the laws and customs of maritime war.

He concludes from this that the Russian Government has not considered this subject as coming within the program provided by the circular of Count **MOURAVIEFF** and he will refrain from taking part in the discussion of this question.

His Excellency Mr. **White** insists that this question, which is doubtful and

of such great importance, be submitted to the Conference in plenary session in order that it may decide it.

The **President** proposes that the Commission utter a *vœu* that the question be referred to the examination of a subsequent conference. If this *vœu* is adopted, it will be submitted to the approval of the Conference.

An exchange of views takes place between the **President**, his Excellency **Mr. White**, **Mr. Bourgeois**, his Excellency **Sir Julian Pauncefoot**, and Messrs. **Rolin** and **Miyatovitch**.

The recommendation proposed by the **President** is adopted, except that France, Great Britain and Russia abstain.

**Mr. Bourgeois** abstains because the uttering of a *vœu* implies competency in his opinion; but, the question whether the Commission is competent or not has not been decided.

Section IV is adopted.

The **President** recalls the fact that a *vœu* regarding this section was proposed by his Excellency **Mr. Eyschen** and adopted by the second subcommission: to entrust to the examination of a subsequent conference the determination of the rights and duties of neutrals.

The Commission likewise adopted this *vœu*, which will be submitted for the approval of the Conference.

The sixty articles proposed by the subcommission having therefore been adopted, the **PRESIDENT** calls the attention of the assembly to the legal character which ought to be given to them as a whole. The drafting committee entrusted with the consideration of this question, agreed, after a conscientious discussion, on the form of the act which is to contain them. It was of opinion that this work ought to be called a convention rather than a declaration.

The title of the act will be: "Convention concerning the laws and customs of war on land."

The purpose of this Convention will be to adopt a uniform basis for the instructions which the respective Governments are to give to their land forces in case of war.

The principle is expressed in the preamble, which was unanimously approved by the drafting committee.

The committee was unanimous in its opinion on another point: it is desirable that the different acts of the Conference be drafted as far as possible in the same form.

The text which has been prepared therefore constitutes but a preparatory work which will be submitted to the Drafting Committee of the Final Act; the latter may modify it for the purpose of attaining the desired uniformity.

**Mr. Rolin** reads the preamble proposed for the draft convention and remarks that the largest part thereof is borrowed from the declaration made by **Mr. Martens** and adopted by the second subcommission at its meeting of June 20.

On motion of **Baron Bildt** and his Excellency **Count Nigra**, it is decided to substitute the word *more* for *entirely* in the first line on page 2.

**Chevalier Descamps** declares that he has not yet had time to ask the opinion of the first Belgian delegate regarding the text of the preamble.

The preamble of the draft convention is adopted under reservation of subsequent amendments and referred to the Drafting Committee of the Final Act.

At the request of **Captain Crozier**, the **President** states that the adoption



of this preamble by the Commission does not yet obligate the respective Governments.

Count **de Macedo** renews the reservations which he made in regard to the ten articles adopted in the first subcommission.

He hastens, however, to add that he recognizes the importance of the work with which the Commission is engaged at this moment.

[23] In regard to the final provisions, the **President** remarks that he deems it useless to deal with them here. The Drafting Committee of the Final Act which will also deal with other acts of the Conference, will work out the final wording proper to be given these provisions.

Jonkheer **van Karnebeek** does not share this opinion. The instructions given the Drafting Committee of the Final Act relate only to the form and not to the contents. Now, it is a question here of the substance of the Convention. In fact, the final provisions mention the signatures and adhesions of the Powers represented at the Conference, without providing for the case of adhesion of a Power which had not participated therein. It is nevertheless evident that this is a fundamental question. The Convention would not be complete in content without mentioning this matter. It is necessary therefore to know whether the Powers not represented at the Hague Conference will be permitted to accede to the Convention.

In the opinion of the **President** there is no doubt as to the privilege of the nations not represented at the Conference to accede, but this accession would constitute but a question of form, so that it evidently devolves upon the Committee on the Final Act to find a general form of wording which shall be submitted to the approval of the Conference in plenary session.

Jonkheer **van Karnebeek** asks why these final provisions were submitted to the Commission if the latter is not the authority to pass upon them. He states furthermore that they are incomplete on one very important point and he desires to have this deficiency supplied.

Colonel **Gross von Schwarzhoff** thinks that as a matter of fact numbers 1 and 2 of the final provisions relate rather to questions of substance than of form; he therefore asks that they be discussed in Commission.

These two numbers are read and adopted subject to final wording.

Jonkheer **van Karnebeek** defines the scope of his proposition, which goes further than mere technical form; it is a fundamental question and he wishes to know whether this Convention will be open or not to those who may wish to accede thereto later on.

Mr. **Bourgeois** says that he thought of the same thing. He is of the same opinion as Messrs. **VAN KARNEBEEK** and **GROSS VON SCHWARZHOF**. But because of the very importance of the provision in question he prefers to entrust its wording to the Committee on the Final Act, which will be able to take into account the general provisions adopted in regard to the other matters studied by the Conference and will be able to reach a decision in conformity with them.

Jonkheer **van Karnebeek** says there is no reason why the question of accession should be decided in the same manner in the case of every particular convention adopted by the Conference.

Baron **Bildt** sees no objection to the Second Commission's expressing its

opinion regarding the substance of the final provisions, in order to furnish a hint to the Committee on the Final Act.

Jonkheer **van Karnebeek** does not oppose this view.

A discussion takes place between the **President, Mr. Rolin**, and **Jonkheer van Karnebeek**.

The latter proposes to add a sixth article worded as follows:

The Powers which did not take part in the Hague Peace Conference are allowed to adhere to the present Convention.

For this purpose they must notify their adhesion in writing to the Netherland Government, which shall make it known to all the other contracting Governments.

After an exchange of views between the **President**, and Messrs. **van Karnebeek, Rolin, Descamps**, and **Motono**, the proposition of Mr. **VAN KARNEBEEK**, seconded by Mr. **DESCAMPS**, is unanimously adopted, save the abstention of Spain and France, in the sense of an indication to be given to the Committee on the Final Act.

Articles 3, 4, and 5 of the final provisions are likewise adopted in the same sense and with the same abstentions.

The meeting adjourns.

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### Annex to the Minutes of the Meeting of July 5

[24]

#### REPORT PRESENTED BY MR. ROLIN

To the second subcommission was assigned for study the subject, "Revision of the Declaration concerning the laws and customs of war elaborated in 1874 by the Conference of Brussels but not ratified up to the present date." This is the seventh of the subjects for discussion enumerated in the circular of his Excellency Count **MOURAVIEFF**, dated December 30, 1898 (old style).

It is proper at the outset to define more exactly this subject by recalling that it is very clearly seen from the entire record of the Conference of Brussels that that Conference was concerned with the laws and customs of war *on land* only. Consequently, our subcommission has been constantly governed by the idea that its own competence was limited to a similar extent. It was for this reason that the subcommission in its meeting of June first merely placed on record the proposition of Captain **CROZIER**, a delegate of the United States of America, looking to the extension of the rules *with respect to immunity of private property on land* over like property *at sea*. For the same reason the subcommission also preferred to leave to the Commission the solution of the particular question whether the rules regarding *bombardments* are to be applied in cases where ships at sea direct their fire towards points on the coast.

The first care of the subcommission was to determine the method of its deliberations. For the basis of its discussion the text of the articles of the Declaration of the Brussels Conference of 1874 was taken, but in a somewhat different order. The order of the various questions was immediately settled as follows in the meeting of May 25:

1. "Prisoners of war" (Articles 23 to 34).
2. "Capitulations" and "Armistices" (Articles 46 to 52).
3. "Parlementaires" (Articles 43 to 44).
4. "Military power with respect to private individuals" and "Contributions and requisitions" (Articles 36 to 42).
5. Articles 35 and 56 relating to the Geneva Convention.
6. "Spies" (Articles 19 to 22).
7. "Means of injuring the enemy" and "Sieges and bombardments" (Articles 12 to 18).
8. "Internment of belligerents and care of the wounded in neutral countries" (Articles 53 to 55).
9. "Military authority over hostile territory" (Articles 1 to 8).
10. "Those who are to be recognized as belligerents; combatants and non-combatants" (Articles 9 to 11).

This order of discussion, intended to reserve the most delicate questions for the end, was adhered to by the subcommission on the first reading, except that after deliberating on the text of Articles 36 to 39 of the Brussels draft concerning the *military power with respect to private individuals*, the subcommission passed at once to the next numbered subject, the fifth, reserving Articles 40 to 42 on *contributions and requisitions* for examination at the same time with the chapter on *military authority over hostile territory* (No. 9 above and Articles 1 to 8).

Afterwards, however, on the advice of the drafting committee appointed in the meeting of June 12,<sup>1</sup> the subcommission adopted a draft in which the articles are arranged in four sections, the first two sections being divided into chapters and the whole arranged in a new order that seemed more methodical. This draft is the one submitted to the Second Commission, and here annexed under the title, "Draft of a Declaration respecting the laws and customs [25] of war on land." In order to establish constant correlation between that text and the present report, the report is divided into sections and chapters corresponding to those of the draft declaration.

Before passing to the detailed examination of the draft now submitted, the Commission's attention should be called to several communications, more or less general in their bearing, that have been made to the subcommission in the course of its discussions.

At the beginning of the meeting held on June 10, General Sir JOHN ARDAGH, technical delegate of the British Government, read a statement to the effect that in his personal opinion, which could not commit his Government, it would be a mistake to ask "that the revision of the Declaration of Brussels should result in an international Convention."

Without seeking (said Sir JOHN ARDAGH) to know the motives to which may be attributed the non-adoption of the Brussels Declaration, it is permissible to suppose that the same difficulties may arise at the conclusion of our labors at The Hague.

In order to brush them aside and to escape the unfruitful results of the Brussels Conference . . . we would better accept the Declaration only as a

<sup>1</sup> This drafting committee was formed of Messrs. BELDIMAN, Colonel A COURT, Colonel GILINSKY, Colonel GROSS VON SCHWARZHOFF, LAMMASCH, RENAULT, General ZUCCARI, and ROLIN, the latter in the capacity of reporter. Except on a special occasion the committee was presided over by Mr. MARTENS, president of the Commission and of the subcommission. As Mr. RENAULT was not able to be present at the last meetings, his place was taken by General MOUNIER.

general basis for instructions to our troops on the laws and customs of war, without any pledge to accept all the articles as voted by the majority.

According to the opinion of Sir JOHN ARDAGH all Governments would thus, even though adhering to the Declaration, retain "full liberty to accept or modify the articles" of the Declaration.

This communication of the technical delegate of Great Britain led Mr. MARTENS to add some information regarding the view which the Imperial Government of Russia takes on the question.

The object of the Imperial Government (said Mr. MARTENS) has steadily been the same, namely, to see that the Declaration of Brussels, revised in so far as this Conference may deem it necessary, shall stand as a *solid basis* for the instructions in case of war which the Governments shall issue to their armies on land. Without doubt, to the end that this basis may be firmly established, *it is necessary to have a treaty engagement* similar to that of the Declaration of St. Petersburg in 1868. It would be necessary that the signatory and acceding Powers should declare in a solemn article that they have reached an understanding as to uniform rules, to be carried over into such instructions. This is the only way of obtaining an obligation binding on the signatory Powers. *It is well understood that the Declaration of Brussels will have no binding force except for the contracting or acceding States.*

From this last sentence it is seen that according to the views of the Russian Government there could be no other course than to conclude a *convention* providing that the adopted rules should not be obligatory *as such* except upon the adhering States. The rules would even cease to be applicable in a war between adhering States if one of them should accept an ally who had not adhered to the Convention.

The delegate of Russia enforced this view by comparing the work to be done with the formation of a "mutual insurance association against the *abuse* of force in time of war," an association which States should be free to enter or not, but which must have its own *by-laws* obligatory upon the members *among themselves*.

In replying to another objection that was made and to which we shall revert later, Mr. MARTENS added that by agreeing to establish a "mutual insurance association against the abuse of force in time of war" for the purpose of protecting the interests of populations against the greatest of disasters, we by no means sanction these disasters, we merely recognize their existence; just as companies that insure against fire, hail or other calamities, merely state existing dangers.

The last part of Mr. MARTENS' speech was in answer to a fundamental objection advanced by his Excellency Mr. BEERNAERT, the first delegate of Belgium, in an address delivered in the meeting of June 6.

It is correct to say that the address of Mr. BEERNAERT was especially devoted to a consideration of Chapters I, II, and IX of the Declaration of Brussels relative to the occupation of hostile territory, the definition of belligerents and the provisions regarding requisitions in kind or of money. Mr. BEERNAERT, apropos of certain clauses in these chapters, put the question whether it is wise "in advance of war and for the case of war, expressly to legalize rights of a victor over the vanquished, and thus organize a *régime* of defeat." He thought it best to

adopt no provision except such as would admit the fact without recognizing a right in the victor, and would carry a pledge on the part of the latter to be moderate.

[26] As a matter of fact, these remarks of the first delegate of Belgium had a very general bearing for they are more or less applicable to every part of the Declaration concerning the laws and customs of war. Mr. MARTENS in reply energetically insisted upon the necessity of not abandoning the vital interests of peaceable and unarmed populations "to the hazards of warfare and international law."

The question thus raised was really whether the fear of appearing by an international regulation to legalize as a right the actual power exercised through force of arms should be a good reason for abandoning the invaluable advantage in a limitation of this power. Besides, no member of the subcommission had any idea that the legal authority in an invaded country should in advance give anything like sanction to force employed by an invading and occupying army. On the contrary, the adoption of precise rules tending to limit the exercise of this power appeared to be an obvious necessity in the real interests of all peoples whom the fortune of war might in turn betray.

The subcommission took into account the views of Mr. BEERNAERT by adopting as its own a declaration which Mr. MARTENS read in the meeting of June 20. The complete text of this declaration will be found below in the commentary upon Articles 1 and 2 (formerly 9 and 10) to which they particularly relate. It should be remembered that, as the subcommission desired, this document is to be given a place in the records of the Conference. As a consequence, the draft is not to be considered as intended to regulate all cases occurring in practice; the law of nations still has its field. Furthermore, it has been formally said that none of the articles of the draft can be considered as entailing on the part of adhering States the recognition of any right whatever in derogation of the sovereign rights of each of them, and that adhesion to the regulations will simply imply for each State the acceptance of a set of legal rules restricting the exercise of the power that it may through the fortune of war wield over foreign territory or subjects.

There still remains to be brought to the notice of the Commission a communication of a general nature. At the meeting of June 3 his Excellency Mr. EYSCHEN, the delegate of the Grand Duchy of Luxemburg, called the attention of the subcommission to the importance of a determination of the rights and duties of neutral States. The subcommission was of the opinion that it should confine itself to examining the questions falling within the terms of the Declaration of Brussels, but it recommended the passage of the resolution expressing the hope "that the question regulating the rights and duties of neutral States may be inserted in the program of a conference in the near future."

We now pass to an examination of the text of the draft Declaration, which is divided into four sections.

## SECTION I.—BELLIGERENTS

CHAPTER I.—*The qualifications of belligerents*

(Articles 1 to 3)

The two first articles of this chapter (Articles 1 and 2) were voted unanimously and are word for word the same as Articles 9 and 10 of the Brussels Declaration, with the exception of a purely formal addition to the final paragraph of the first article made on the second reading, in order to include *volunteer corps* as well as *militia* within the term *army*.

When these articles were first submitted to discussion, Mr. MARTENS read the declaration already spoken of and the subcommission immediately adopted it for submission to the Conference. Its text follows:

The Conference is unanimous in thinking that it is extremely desirable that the usages of war should be defined and regulated. In this spirit it has adopted a great number of provisions which have for their object the determination of the rights and of the duties of belligerents and populations and for their end a softening of the evils of war so far as military necessities permit. It has not, however, been possible to agree forthwith on provisions embracing all the cases which occur in practice.

On the other hand, it could not be intended by the Conference that the cases not provided for should, for want of written provision, be left to the arbitrary judgment of the military commanders.

[27] Until a perfectly complete code of the laws of war is issued, the Conference thinks it right to declare that in cases not included in the present arrangement, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity, and the requirements of the public conscience.

It is in this sense especially that Articles 9 and 10 adopted by the Conference must be understood.

The senior delegate from Belgium, Mr. BEERNAERT, who had previously objected to the adoption of Articles 9 and 10 (1 and 2 of the new draft), immediately announced that he could because of this declaration vote for them.

Unanimity was then obtained on those very important and delicate provisions relating to the fixing of the qualifications of belligerents.

The third and last article of this chapter, which is identical except as to details of form with Article 11 of the Brussels draft, expressly says that non-combatants forming part of an army should also be named belligerents, and that both combatants and non-combatants, that is to say *all belligerents*, have a right in case of capture by the enemy to be treated as prisoners of war.

There was some thought of transferring this article, or at least its last sentence, to the chapter on prisoners of war. But in the end it appeared useful, after having defined the conditions of belligerency, to state at once this essential right that a belligerent possesses in case of capture by the enemy, to be treated as a prisoner of war. And besides, this gives us a very natural transition to Chapter II, which follows immediately and fixes the condition of prisoners of war.

Before the above declaration, adopted on the motion of Mr. MARTENS, was communicated to the subcommission General Sir JOHN ARDAGH, technical delegate of Great Britain, proposed to add at the end of the first chapter the following provision:

Nothing in this chapter shall be considered as tending to diminish or suppress the right which belongs to the population of an invaded country to patriotically oppose the most energetic resistance to the invaders by every legitimate means.

From a reading of the minutes of the meeting of June 20, it would seem that most of the members of the subcommission were of opinion that the rule thus formulated added nothing to the declaration which Mr. MARTENS had read at the opening of that meeting. The delegation of Switzerland, nevertheless, appeared to attach great importance to this additional article and went so far as to suggest that its adhesion to Articles 1 and 2 (Brussels 9 and 10) might not be given if the proposal of Sir JOHN ARDAGH was not adopted. Mr. KÜNZLI spoke to that effect. On the other hand, the technical delegate of Germany, Colonel GROSS VON SCHWARZHOFF, emphatically asserted that Article 9 of Brussels (now the first article) makes recognition of belligerent status depend only on conditions that are very easy to fulfill; he said that there was consequently in his view no need of voting for Article 10 (now Article 2), which also recognizes as belligerents the population of territory that is not yet occupied under the sole condition that it respect the laws of war; but that he had nevertheless voted for that article in a spirit of conciliation. "At this point, however," said the German delegate most emphatically, "my concessions cease; it is absolutely impossible for me to go one step further and follow those who declare for an absolutely unlimited right of defense."

At the end of the debate and in consideration of the declaration adopted on motion of Mr. MARTENS, Sir JOHN ARDAGH withdrew his motion, for the sake of harmony.

## CHAPTER II.—*Prisoners of war*

### (Articles 4 to 20)

The chapter on prisoners of war in the Brussels Declaration of 1874 (Articles 23–34) began with a definition forming the first paragraph of Article 23 and couched in the following terms: "Prisoners of war are lawful and disarmed enemies." This definition was, so to speak, the residuum of another [28] and much longer definition in Article 23 of the first draft submitted to the Brussels Conference by the Imperial Russian Government. Considering the rather vague character of these definitions and the difficulty of finding any other that is more complete and more precise, the subcommission agreed to leave out the definition and to confine itself in this chapter to saying what shall be the treatment of prisoners of war.

It is for these reasons that Article 4, which is the first one under this chapter and corresponds to Article 23 of the Brussels project, begins at once with these words: "Prisoners of war are in the power of the hostile Government, etc."

The paragraph relating to *acts of insubordination* has also been omitted in this article, but it is to be found farther on in Article 8, where it seems to be better placed.

Most of the other provisions adopted at Brussels concerning this subject of the treatment of prisoners of war have been retained by the subcommission with very slight changes, an explanation of which may be found in the minutes of the meetings of May 27 and 30.

Article 5, respecting internment of prisoners, is an exact copy of Article 24.

Article 6 combines the provisions of Articles 25 and 26 of Brussels in a slightly different wording proposed by Mr. BEERNAERT.

Article 7 is almost the same as Article 27, save that it regulates the treatment of prisoners as to *quarters* as well as to food and clothing.

Article 8, respecting the discipline of prisoners of war, corresponds to Article 28 of the Brussels project, but with a few changes other than of form, especially as regards *escapes by prisoners*. An analysis of these changes is given below.

Article 9 repeats literally Article 29 on the declaration of name and rank.

Article 30 of the Brussels project, respecting the *exchange of prisoners*, has been omitted as useless, for the reason that the question of exchange cannot be made the subject of a general rule, inasmuch as an exchange can of course always result from an agreement between the belligerents.

Articles 10, 11, and 12 concerning *liberation on parole*, except as to a few details of wording, the same as Articles 31, 32, and 33 of the Declaration of Brussels.

But the new Article 13 respecting persons to be classed with prisoners of war differs considerably both in form and substance from Article 34 of the Brussels project.

Finally we come to Articles 14 to 20 which are all new and have been adopted on the motion of Mr. BEERNAERT.

On the whole then, it is proper to furnish special explanations with regard to Article 8 (old 28), Article 13 (old 34), and the new Articles 11 to 17.

As has just been said, a long discussion took place on Article 28, now Article 8, especially on the subject of the *escape* of prisoners of war. Finally it was agreed, as it had been at Brussels in 1874, that an *attempt at escape* should not go entirely unpunished, but that it is desirable to limit the degree of punishment which it may entail, especially to forestall the temptation with the enemy to regard the act as similar to desertion and therefore punishable with death. Consequently it was decided that "escaped prisoners who are retaken before being able to rejoin their army or before having left the territory occupied by the army that captured them are liable to *disciplinary punishment*." Nevertheless, it was agreed in the course of the debate that this restriction has no application to cases where the escape of prisoners of war is accompanied by special circumstances amounting, for example, to a *plot*, a *rebellion*, or a *riot*. In such cases, as General VON VOIGTS-RHETZ remarked at Brussels in 1874,<sup>1</sup> the prisoners are punishable under the first part of the same article which says that they are "subject to the laws, regulations, and orders in force in the army of the State in whose power they are"; and it is necessary further to supplement this provision with the one which has been taken from the old Article 23 and added to Article 8, laying down, on the subject of prisoners, that "any act of insubordination justifies the adoption towards them of such measures of severity as may be necessary."

<sup>1</sup> Minutes of the meeting of August 6, 1874.



Article 28 of the Brussels project provided particularly that *arms may be used, after summoning, against a prisoner of war attempting to escape*. This provision was struck out by the subcommission. In doing so, the subcommission did not deny the right to fire on an escaping prisoner of war if military [29] regulations so provide, but it seemed that no useful purpose would be served in formally countenancing this extreme measure in the body of these articles.

Finally the subcommission retained, with some hesitation, the last paragraph of the article, by the terms of which "prisoners who, after succeeding in escaping, are again taken prisoners, are not liable to any punishment for their previous flight." The subcommission was influenced by the consideration that when a prisoner of war has regained his liberty his situation in fact and in law is in all respects the same as if he had never been taken prisoner. No actual penalty should therefore apply to him on account of the anterior fact.

Article 34, now Article 13 of the draft of the subcommission, has also undergone considerable change. The old wording was especially wanting in clearness as it seemed to say that the persons meant who accompany the army without being a part of it (such as newspaper correspondents, sutlers, contractors, etc.) shall be made prisoners if they are provided with regular permits. Accordingly it would be literally sufficient in order to be left free not to have the regular permit. Such certainly is not the meaning of this provision. The subcommission consequently adopted at the suggestion of the reporter a more precise wording which closely follows the text of Article 22 of the manual of the laws of war on land of the Institute of International Law. This text keeps in sight the fact that these persons cannot really be considered as prisoners of war at all. But it may be necessary to *detain* them either temporarily or until the end of the war and in this case it will certainly be advantageous for them to be treated like prisoners of war. Nevertheless, they can depend upon obtaining this advantage only if they are "in possession of a certificate from the military authorities of the army they were accompanying."

There remains to be said a few words about the last seven articles (14-20) of this chapter, which were added to it on the motion of his Excellency Mr. BEERNAERT, the senior delegate of Belgium.

Mr. BEERNAERT called attention to the fact that these proposals are by no means new, having first been suggested by Mr. ROMBERG-NISARD, who was actively engaged in relieving the sufferings of the victims of the war of 1870, and never ceased to agitate for better treatment of the wounded and prisoners in wars of the future.

These additional provisions provide, in the first place, for making general the organization of *information bureaus* concerning prisoners, similar to the one instituted in Prussia in 1866 which rendered such great service during the war of 1870-1. This is the object of the first of these articles (Article 14). The second article (Article 15) provides that certain facilities shall be given to such *relief societies for prisoners of war* as are properly constituted. The third article (Article 16) grants *free postage* and other advantages to the information bureaus and in general for shipments made to prisoners. The fourth article (Article 17) has for its object to favor *payment of salary* to prisoners who are officers. The fifth and sixth articles (Articles 18 and 19) secure to prisoners *free exercise of their religion*, grant them facilities for making *wills*, and deal

with *death certificates* and *burials*. Finally, the last of these new articles (Article 20) expressly stipulates that after the conclusion of peace "the *repatriation* of prisoners of war shall be carried out as quickly as possible." Immediate absolute liberation is indeed not possible, for it would be sure to lead to disorder.

This Article 20 was to have a second paragraph saying that no prisoner of war can be detained nor his liberation postponed on account of sentences passed upon him or of acts occurring since his capture, crimes or offenses at common law excepted. At the suggestion of Colonel GROSS VON SCHWARZHOF this provision was omitted by common accord in consideration of the requirements of discipline which must be maintained and enforced with sufficient penalties up to the very last day of the captivity of prisoners of war.

The only one of these additional provisions due to the initiative of the senior delegate of Belgium that has given rise to discussion is the third (Article 16), relative to *postal, customs and other privileges*. But through the hearty support of Mr. LAMMASCH, the technical delegate of Austria-Hungary, and General DEN BEER POORTUGAEL, the second delegate of the Netherlands, this article was adopted unanimously.

It should be observed that postal and other conventions will have to be modified to conform to this provision. As to the customs franking privilege, it obviously applies only to articles *for the personal use of the prisoners*.

It may be interesting to state here that these Articles 14 to 20 even more [30] than attain the end that the Belgian delegation had in view when, in 1874, at the Brussels Conference, it proposed through the medium of Baron LAMBERMONT six articles relative to relief societies for prisoners of war. These articles were then the subject of a favorable order of the day, but they were not embodied in the project of the Declaration of Brussels.

### CHAPTER III.—*The sick and wounded*

#### (Article 21)

The sole article in this chapter is a literal copy of Article 35 of the Brussels project. It was adopted unanimously and without debate. As the chairman of the subcommission remarked, we confine ourselves to stating that the rules of the Geneva Convention must be observed *between belligerents*. Moreover, the last part of the article anticipates a future modification of that Convention.

As you know, it is stated elsewhere, in Article 60 (old Article 56), that the Geneva Convention likewise applies to the sick and wounded interned in neutral territory.

## SECTION II.—HOSTILITIES

### CHAPTER I.—*Means of injuring the enemy, sieges, and bombardments*

#### (Articles 22 to 28)

This chapter combines under one heading two distinct chapters of the Declaration of Brussels, of which the first was entitled "Means of injuring the enemy" (Articles 12 to 14), and the second "Sieges and bombardments" (Articles 15 to 18).

The union of these chapters in a single one, as proposed by the drafting committee and approved on second reading by the subcommission, had for its object to make it clearly appear that the articles respecting means of doing injury are also applicable to sieges and bombardments.

The new Articles 22, 23, and 24 correspond exactly, aside from some changes of wording, to Articles 12, 13, and 14 of the Declaration of Brussels.

Article 23 begins with the words: "In addition to the prohibitions provided by special conventions, it is especially forbidden. . . ." These special conventions are first the Declaration of St. Petersburg of 1868, which continues in force, and then all those of like nature that may be concluded, especially subsequently to the Hague Conference. It seemed to the subcommission that the general formula was preferable to the old reading which mentioned only the Declaration of St. Petersburg.

Article 23 forbids, under letter *g*, any destruction or seizure of the enemy's property not demanded by the necessities of war. The drafting committee had proposed to omit this clause as it seemed to it useless in view of the provisions farther on prescribing respect for private property; but the subcommission retained it, on the second reading, at the instance of Mr. BEERNAERT, for the reason that the chapter under consideration deals with limiting the effects of *hostilities*, properly so called, while the other provisions referred to treat more particularly of *occupation* of hostile territory.

The wording of Article 24 (old 14) has been criticized. Taken literally this article might indeed be taken to mean that *every ruse of war and every method necessary to obtain information about the enemy and the country should ipso facto* be considered "permissible." It is understood that such is by no means the import of this provision, which aims only to say that ruses of war and methods of obtaining information are not prohibited as such. They would cease to be "permissible" in case of infraction of a recognized imperative rule to the contrary.

The Brussels Article 14 particularly cited one of these imperative rules — that which forbids compelling the population of an occupied territory to take part in military operations against their own country (Article 36 of Brussels). [31] But there are many others, such, for example, as the prohibition against the improper use of a flag of truce (Article 23 *f*). There are even some that are not expressly sanctioned in any article of the Declaration. And under these conditions, not being able to recall all these rules with regard to Article 24, the subcommission thought it was better to mention none of them, believing that the explanation now made would be sufficient to indicate the true meaning of this article.

Articles 25, 26, 27, and 28 are almost word for word the same as Articles 15 to 18 of the Brussels project, the slight modifications therein being purely in expression.

Respecting the prohibition of bombarding towns, villages, dwellings, or buildings, which are not defended (Article 25), it is proper to refer to an observation made by Colonel GROSS VON SCHWARZHOFF, who said that this prohibition certainly ought not to be taken to prohibit the destruction of any buildings whatever and by no means when military operations rendered it necessary. This remark met with no objection in the subcommission.

As has been indicated at the beginning of this report, the question was asked

whether the last articles of this chapter were to be considered as applicable to bombardment of a place on the coast by *naval forces*. General DEN BEER POORTUGAEL, delegate of the Netherlands, and Mr. BEERNAERT maintained the affirmative. But, on motion of Colonel GILINSKY, technical delegate of the Russian Government, the examination of this question was by general agreement reserved for the Commission in plenary session.

## CHAPTER II.—*Spies*

### (Articles 29 to 31)

The three articles of this chapter reproduce almost literally the wording of Articles 19 to 22 of the Brussels project. Former Articles 19 and 22 have, on the motion of General MOUNIER, technical delegate of the French Government, merely been combined to form Article 29. These two provisions in reality deal with a single idea, which is to determine who can be considered and treated as a spy, and to specify at once, *merely by way of example*, some special cases in which a person cannot be considered as a spy.

With respect to Article 30 (Article 20 of Brussels) it has been remarked that in applying the penalty the requirements of a previous judgment is, in espionage as in all other cases, a guaranty that is always indispensable, and the new phrasing was adopted with the purpose of saying this more explicitly.

It results from Article 31 (Article 21 of Brussels) that a spy not taken in the act but falling subsequently into the hands of the enemy incurs no responsibility for his previous acts of *espionage*. This special immunity is in harmony with the customs of warfare; but the words in italics have been added, on the second reading, to show clearly that this immunity has reference to acts of espionage only and does not extend to other offenses.

## CHAPTER III.—*Parlementaires*

### (Articles 32 to 34)

The three articles composing this chapter correspond to Articles 43, 44, and 45 of the Brussels project.

The text of Article 32 differs slightly from that of Article 43. As a consequence the parlementaire may be accompanied not only by a trumpeter, bugler or drummer, and by a flag-bearer, but also by an interpreter. It is also a consequence of the new reading that he may do without one or more of these attendants and go alone carrying the white flag himself.

Article 33, with the exception of some changes in form adopted on the first and second readings, is the same as the first two paragraphs of the Brussels Article 44. It deals with the right that every belligerent has either to refuse to receive a parlementaire, or to take the measures necessary in order to prevent [32] him from profiting by his mission to get information, or finally to detain him in case of abuse. All these rules conform to the necessities and customs of war.

The Brussels Article 44 contained a final paragraph permitting a belligerent to declare "that he will not receive parlementaires during a certain period," and adding that "parlementaires presenting themselves after such a notification, from the side to which it has been given, forfeit the right of inviolability."

The loss of inviolability is certainly an extreme penalty; but this special point has no longer any interest, for this provision is omitted in the new draft. It appears from the discussion which took place at the meeting of May 30, and especially from the remarks made on this article by the first delegate of Italy, his Excellency Count NIGRA, that according to the views of the subcommission, the principles of the law of nations do not permit a belligerent ever to declare, even for a limited time, that he will not receive flags of truce. At the Brussels Conference in 1874, moreover, this provision was debated at length and was only finally accepted to satisfy the German delegate, General VON VOIGTS-RHETZ. The technical delegates at the Hague Conference, and conspicuously the German delegate, Colonel GROSS VON SCHWARZHOFF, have on the contrary seemed to consider that the necessities of warfare are sufficiently regarded in the option that every military commander has of not receiving a flag of truce in all circumstances (first paragraph of Article 33). They accordingly voted with the entire subcommission for the abrogation of the last paragraph of former Article 44.

Article 35 is identical with Article 45 of Brussels. It provides that "the parlementaire loses his rights of inviolability if it is proved in a clear and incontestable manner that he has taken advantage of his privileged position to provoke or commit an act of treason." This provision elicited no remarks as to its substance. It was merely asked how a parlementaire could *commit* an act of treason *against the enemy*. The text was nevertheless retained in view of certain systems of penal legislation which regard the instigator of an offense as a principal.

#### CHAPTER IV.—*Capitulations*

##### (Article 35)

The sole article of this chapter is, with a few changes in wording, like Article 46 of the Brussels project.

The clause according to which "capitulations can never include conditions contrary to honor or military duty," proposed at Brussels by the French delegate, General ARNAUDEAU, and inserted almost literally in Article 46, has been retained in principle. The wording of the new Article 35, as adopted by the subcommission, gives even a more imperative form to this principle by saying that the capitulations "must take into account the rules of military honor."

#### CHAPTER V.—*Armistices*

##### (Articles 36 to 41)

This chapter contains six articles corresponding to Articles 47 to 52 of the Brussels project and almost reproduces their wording.

Article 36 determines the *effects and duration of an armistice*; Article 37 distinguishes between *general* and *local* armistices. These two articles are simply reproductions of Articles 47 and 48 of Brussels.

Article 38, dealing with *notification* of an armistice and with *suspension of hostilities*, differs from Brussels Article 49 in admitting that hostilities can be suspended not only from the very moment of notification but after a time agreed upon.

The wording of Article 39 follows that of Article 50 of Brussels, but ex-

pands it and renders it more exact. In effect, it permits an armistice to regulate not only the communications *between* the populations but also those [33] *with* them; at the same time it says that this shall only be "in the theater of war." In the absence of special clauses in the armistice these matters are necessarily governed by the ordinary rules of warfare, especially by those concerning occupation of hostile territory.

The subject of the violation of an armistice by one of the parties gave rise to a discussion in the meeting of May 30. Article 51 of the Brussels project confined itself on this subject to saying that a violation of an armistice by one of the parties gives the other the right to denounce it. At the suggestion of Colonel GROSS VON SCHWARZHOFF, the subcommission admitted that the right to denounce an armistice would not always be sufficient, and that it was necessary to recognize in the belligerent the right, *in cases of urgency*, "of recommencing hostilities immediately." On the other hand, the subcommission thought that in order to justify a denouncement of an armistice and, with greater reason, to authorize an immediate resumption of hostilities, there must be a *serious* violation of the armistice; it is for this reason that the new Article 40 differs to that extent from the article accepted at Brussels.

Article 52, respecting violation of an armistice *by individuals*, was not changed and has become the new Article 41. It only provides for "the punishment of the offenders and, if necessary, compensation for the losses sustained."

### SECTION III.—MILITARY AUTHORITY OVER THE TERRITORY OF THE HOSTILE STATE

(Articles 42 to 56)

The above title is that of the first chapter (Articles 1 to 8) of the Declaration of Brussels. As early as the meeting of June 1, the subcommission decided to place the articles concerning *contributions* and *requisitions* (Brussels Articles 40 to 42) also in this chapter and to examine them at the same time. Finally it instructed the drafting committee also to place in this chapter the new text that had already been adopted for Articles 36 to 39 inclusive of the Declaration of Brussels, where they form the chapter entitled "Military authority over private individuals." Thus the present chapter has been lengthened considerably. Moreover, the debate on it has been arduous; but the patient courtesy of Mr. MARTENS, chairman of the subcommission, together with the good feeling of all its members, has resulted in the unanimous agreement that every one ardently hoped for.

The first article of this chapter (Article 42), defining occupation, is indetical with the first article of the Declaration of Brussels. It should be stated that it was adopted unanimously by the subcommission, as also were all or nearly all of the principal articles of this chapter.

Article 43 condenses into a single text Articles 2 and 3 of the Brussels Declaration. The new wording was proposed by Mr. BIHOURD, the Minister of France at The Hague and one of the delegates of his Government. The last words of Article 43, where it is said that the occupant shall restore or ensure order "while respecting, unless absolutely prevented, the laws in force in the country," really give all the guaranties that the old Article 3 could offer and do

not offend the scruples of which Mr. BEERNAERT spoke in his address, referred to at the beginning of this report, which had led him to propose at first that Article 3 be omitted.

The omission of Article 4 of the Brussels Declaration was unanimously voted for at the instance of Mr. BEERNAERT, vigorously supported by Mr. VAN KARNEBEEK. The first delegate of the Netherlands stated that he opposed any provision that might seem directly or indirectly to give the public officers of an invaded country any authority to place themselves at the service of the invader. It was not denied, however, that certain officers, particularly municipal officers, might sometimes best perform their duty, in a moral sense at least, towards their people if they remained at their posts in the presence of the invader.

The four following articles, Articles 44 to 47 inclusive, are the Brussels Articles 36 to 39 inclusive, with some very slight changes. They set forth the recognized essential principles which must serve the invader and the occupant as a general rule of conduct in his relations with the population. These principles safeguard the honor and lives of individuals and their private property, [34] whether individual or collective, as well as respect for religious convictions.

Besides, as Colonel GROSS VON SCHWARZHOFF remarked without contradiction, these limitations could not be deemed to check the liberty of action of belligerents in certain extreme circumstances which may be likened to a kind of legitimate defense.

The new Article 48, like Article 5 of the Brussels Declaration, provides that the occupant shall collect the *existing taxes*, and in this case prescribes that he must "defray the expenses of the administration of the occupied territory to the same extent as the legitimate Government was so bound." It may be observed that the new article adopts a conditional form. This wording was proposed by the reporter with a view to obtaining the support of Mr. BEERNAERT and other members of the subcommission who had expressed the fears aroused in their minds by any wording apparently recognizing rights in an occupant as such.

The four next articles, 49 to 52 inclusive, deal with *extraordinary contributions*, with *finés*, and with *requisitions*, and take the place of Articles 40 to 42 inclusive of the Brussels Declaration. Quite a divergence of views on the subject of these articles was evidenced in the debate.

On motion of Mr. BOURGEOIS, seconded by Mr. BELDIMAN, the question was referred to the drafting committee with an instruction to set forth in a new text only the points on which an agreement seemed possible.

The committee, of which Mr. BOURGEOIS was chairman, made a thorough study of these questions with the active assistance of Messrs. BEERNAERT, VAN KARNEBEEK, and ODIER, and it ascertained that agreement certainly existed on three important points concerning the levying of contributions of any kind in hostile territory. These three points are the following:

1. Every order to collect contributions should emanate from a responsible military chief, and should be given, as far as possible, in writing.
2. For all collections, especially those of sums of money, it is necessary to take into account as far as possible the distribution and assessment of the existing taxes.

### 3. Every collection should be evidenced by a receipt.

The committee next discussed the question whether it should confine itself to giving expression to these three purely formal conditions and to determining to what extent they are applicable to the requisitions in kind or money and the fines required by the occupant. It came to the conclusion that, relying on the general considerations indicated at the beginning of this report, as being of a nature to dispose of the objections stated by Mr. BEERNAERT, it would be not only possible but also highly desirable to state certain principles on the lines of Articles 40 to 42 of the Brussels Declaration, that is to say, concerning the limitations to be placed on the actual power which the invader exercises against the legal authorities and which in its tendency weakens the principle of respect for private property. The rules to be laid down relate to three categories of acts:

a. Requisitions for payments in kind (money being excepted), and for personal services, or in other words, "requisitions in kind and services" (Article 51);

b. The levying and collecting of contributions of money beyond the existing taxes (Article 49);

c. The imposition and collection of what are improperly called "fines" (Article 50).

a. As to *requisitions in kind and services*, it has been admitted that the occupant cannot demand them from communes or inhabitants except "for the needs of the army of occupation." This is the rule of necessity; but this necessity is that of maintaining the army of occupation. It is no longer the rather vague criterion of "necessities of war" mentioned in Article 40 of the Brussels project under which, strictly, the country might be systematically exhausted.

It has been fully agreed to retain the provision of Article 40 of the Brussels Declaration which requires that the requisitions and services shall be "in proportion to the resources of the country, and of such a nature as not to involve the population in the obligation of taking part in the operations of the war against their country."

It was necessary to recognize that one of the three formal conditions mentioned above, that of collection "following the local rules of distribution and assessment of taxes," although applicable in a certain degree to contributions in personal services, is evidently not applicable to requisitions in kind so called, that is to say, the requisition of particular objects in the hands of their owners [35] either to make temporary use of them or for consumption. The committee therefore thought, and the subcommission agreed thereto, that some limitations should be stated here so that the requisitions and services demanded will be "in proportion to the resources of the country."

There remain two other formal conditions that were agreed upon, one respecting the order for the collection and the other respecting the receipt. These two conditions already appeared in Article 42 of the Brussels project, and the committee had little to do beyond reproducing them. In conformity with the Brussels text it has been agreed that the requisition orders must emanate only from the commander on the spot, but that in this case the requirement of a written order would be excessive. Military necessities are opposed to de-



manding for ordinary daily requisitions a higher authority than that of the officer on the spot, and a written order would be superfluous in view of the obligation to give a receipt.

Lastly, the wording agreed upon in the matter of requisitions recommends the rule of payment therefor in money, although such payment is not made a hard-and-fast obligation. Such payments will ordinarily take place under the form of real purchases instead of requisitions. And it is to be noted that this will often be not only a method of strict humanity but also commonly one of shrewd policy, if only to deter the people from hiding their provisions and produce. Besides, the army of occupation will obtain in the same country the money necessary for payments on account of requisitions or purchases by means of contributions whose weight will be distributed over all, whilst requisitions without indemnity strike at random upon isolated individuals.

b. As to the *money contributions* that the occupant may wish to collect beyond the regular taxes, the subcommission at the instance of the drafting committee agreed upon the very interesting and valuable rule for occupied territory, that except in the special cases of fines, which are the subject of a separate article, these contributions can, like requisitions, be levied "for the needs of the army" alone. The only other legitimate motive for collecting the contributions would lie in the administrative needs of the occupied territory, and the population thereof evidently cannot make a just complaint on that score.

On the whole what is forbidden is levying contributions for the purpose of enriching oneself.

It is important to state that this formula is more stringent than that of Article 41 of the Brussels Declaration; and right here is a point that received the especial attention of those members of the subcommission who, being properly interested by the situation of their countries, showed themselves above all solicitous to restrain as far as possible by legal rules the absolute liberty of action that success in arms actually gives to an invader.

The three formal conditions indicated above (the order for collection, the collection, and the receipt) have unlimited application to these contributions, but it seemed best to insert them in a special article applicable to every collection of money.

c. As to *fines*, a separate article seemed necessary in order that it might be determined as exactly as possible in what cases it is proper to impose fines.

In the view of the committee the word *fines* itself is not quite apt because it lends itself to confusion in thought with penal law. Certain members of the committee have even urged that the use of the word "repression" be avoided.

According to the point of view at first taken by the subcommission, this article ought to deal only with what is given the special designation "*fines*" in the law of war, that is a particular form of extraordinary contribution consisting in the collection of sums of money by the occupant for the purpose of checking acts of hostility. On this subject the subcommission was unanimously of opinion that this means of restraint which strikes the mass of the population ought only to be applied as a consequence of reprehensible or hostile acts committed by it as a whole or at least permitted by it to be committed. Consequently, acts that are strictly those of individuals could never give rise to collective punishment by the collection of extraordinary contributions, and it

is necessary that in order to inflict a penalty on the whole community there must exist as a basis therefor *at the very least a passive responsibility therefor* on the part of the community. Having proceeded thus far upon this course, the drafting committee first, and then the subcommission, thought they could go still further and, without prejudging the question of reprisals, declare that this rule is true, not only for fines, but for every penalty, whether pecuniary or not, that is sought to be inflicted upon the whole of a population.

Finally, the subcommission approved the special Article 52 proposed by the committee, concerning the three formal rules applicable to every collection whatever of sums of money by the occupant.

[36] It is on the strength of the foregoing considerations that the subcommission has adopted with only a few slight modifications in form Articles 49 to 52 of the text proposed to it by the drafting committee.

It is also proper to say that these provisions have been voted unanimously with the exception of the vote of the delegate of Switzerland on Articles 51 and 52. That delegate had proposed in behalf of his Government that the right to claim payment or reimbursement *on the evidence of the receipts* be expressly stipulated in these articles. The subcommission thought that such a stipulation would be out of place in the proposed Declaration as it relates rather to internal public law and will naturally be the subject of one of the clauses of the treaty of peace.

The next article, bearing the number 53, corresponds to Article 6 of the Brussels Declaration. It deals with seizure by the occupant of the personal property of the hostile State and, by extension, of all material serviceable for carrying on war and especially of *railway plant*.

The subcommission unanimously adopted the first paragraph of this article at once without making any change therein. Such was not the case with the second paragraph, which derogates, especially in the matter of railway plant, from the principle of respect for private property. Mr. BEERNAERT proposed to indicate that seizure of this material can only be in the nature of a *sequestration*, aside from the option of *requisitioning* it for the needs of the war. This proposal was discussed at length, with the result that this paragraph and its amendments were returned to the drafting committee. That committee expressed the opinion that if greater exactness were given to the wording of this provision, it would probably be impossible to reach an agreement, and that it therefore seemed best to preserve as far as possible the text of the Brussels draft. Nevertheless the draft was condensed into a single sentence for the sake of precision, and, on the proposal of the drafting committee, the subcommission also decided to omit an ambiguous clause which said that the means in question of carrying on war "cannot be left by the army of occupation at the disposal of the enemy." Moreover this clause seemed to contain an allusion to the idea of sequestration which the subcommission wished to avoid.

On the other hand, the drafting committee and later the subcommission accepted the principle of the amendment proposed by Mr. BILLE, the senior delegate of Denmark, concerning "shore ends of cables." It was therefore decided to say: "Land telegraphs *including shore ends of cables*." The author of the amendment further specified the shore ends of cables which are "established within the maritime territorial limits of the State."

As it was necessary to refrain from dealing here, even incidentally, with

the very delicate questions of the nature of the rights of a State over the adjacent territorial sea and of the extent of such marginal waters, the last words of Mr. BILLE's amendment were not adopted.

Furthermore, on motion of Mr. LAMMASCH, it was decided that the article should mention *telephones*.

It did not seem opportune to make any special stipulation with regard to the application of this article that the belligerent who makes a seizure is obliged to give a receipt as in the case of requisitions; but the committee was nevertheless of opinion that the fact of seizure should be clearly stated one way or another if only to furnish the owner of the articles seized with an opportunity to claim the indemnity expressly provided in the text.

The proposal by Mr. ODIER that "railway plant even when belonging to the enemy State shall be restored at the conclusion of peace" was not accepted, as the committee believed that this question was among those that should be settled by the treaty of peace.

Article 54, which is wholly new and due to the initiative of Messrs. BEERNAERT and EYSCHEN, prescribes that: "the plant of railways coming from neutral States, whether the property of those States or of companies or of private persons, shall be sent back to them as soon as possible." Mr. BEERNAERT had suggested ordering *immediate restitution of this material with a prohibition of using it for the needs of the war*; but the subcommission agreed with the drafting committee in thinking that it was sufficient to lay down the principle of restitution within a short time for the sole purpose of pointing out that the material belonging to neutrals, unlike that of belligerents, cannot be the object of seizure.

Article 55, relative to the administration of State property in occupied territory, is a verbatim reproduction of Article 7 of the Brussels draft. Article

56, too, which relates to respect for property belonging to communes and [37] charitable and other institutions, is identical with the Brussels Article

8, save for a very slight change in wording of the second paragraph. There can be no doubt that the expression "institutions dedicated to religion" found in this Article 56, applies to all institutions of that kind, as churches, temples, mosques, synagogues, etc., without any discrimination between the divers forms of worship. This was already affirmed at Brussels in 1874, and it is likewise the answer given for the committee to General MIRZA RIZA KHAN, the senior delegate of Persia, in response to a request for explanation.

A general observation should be made on the subject of all the articles comprised in Section III. This is that the restrictions imposed on the liberty of action of an occupant apply *a fortiori* to an invader when an occupation has not yet been established in the sense of Article 42.

Thus Articles 44 and 45 apply to the invader as well as to the occupant, and either of them will necessarily be forbidden to force the population of a territory to take part in military operations against its own country or to swear allegiance to the hostile Power.

As to the collection of contributions and requisitions or to the seizure of *matériel*, it is understood that an invader shall stand in these matters in the same position as an occupant.

## SECTION IV.—THE INTERNMENT OF BELLIGERENTS AND THE CARE OF THE WOUNDED IN NEUTRAL STATES

(Articles 57 to 60)

The four articles comprised in this final chapter of the draft voted by the subcommission are a verbatim copy of Articles 53 to 56 inclusive of the Brussels project, with the exception of the addition of a supplementary paragraph to Article 59.

At the opening of the discussion on these articles, and particularly with reference to the first one, which treats of the *internment* of belligerents on neutral territory, his Excellency Mr. EYSCHEN, the senior delegate of Luxemburg, in the meeting of June 6 spoke of the special situation of the Grand Duchy under the Treaty of London of 1867 with regard to this obligation to intern belligerents. That treaty disarmed the Luxemburg Government, and does not permit it to maintain more troops than are necessary to preserve public order. The result is that Luxemburg could not assume the same obligation as the other States. On the request of Mr. EYSCHEN record was made of his declaration that he intends to reserve to his country all rights under the Treaty of London of May 11, 1867, and especially Articles 2, 3, and 5 thereof.

Articles 53 and 54 of the Brussels project respecting the internment of belligerents on neutral territory were then adopted without modification and have become Articles 57 and 58 of the subcommission's draft.

Article 59 relating to passage over neutral territory, that is to say, across neutral territory, of the wounded or sick belonging to belligerent armies, is like the Brussels Article 55 except for the addition of the third paragraph. This supplementary paragraph was adopted on the first reading on motion of Mr. BEERNAERT and General MOUNIER, as follows: "When once admitted into neutral territory, the sick or wounded can be returned only to their country of origin."

But doubts immediately arose as to the exact meaning of this stipulation. Several members of the committee believed that it gave authority to the neutral State to restore the wounded and sick forthwith to their country of origin, whereas evidently the only question should be that of forbidding the use of neutral territory for the purpose of conveying sick or wounded to a hostile country where they would become prisoners of war. The new draft precludes all doubt, by saying that "wounded or sick brought under these conditions into neutral territory by one of the belligerents, and belonging to the hostile party, must be guarded by the neutral State, so as to ensure their not taking part again in the operations of the war." General ZUCCARI, the technical delegate of the Italian Government, declared that having in view respect for absolute impartiality on the part of neutrals, he regretted that he could not give his approval to this last wording any more than to the preceding one.

[38] There remained the case of wounded or sick belonging to the army of the belligerent which is conveying them, but which for one reason or another, instead of simply passing through the neutral territory, stops there. It surely would be extraordinary if they could, when they recover, take part again in the operations of the war, and that is why the subcommission adopted on second reading,

on the motion of Mr. BEERNAERT, an additional provision stipulating that these wounded or sick must likewise be guarded by the neutral State.

Mr. CROZIER had drawn the attention of the subcommission to a contradiction existing in his opinion between the paragraph in question and Article 10 of the draft for the adaptation of the principles of Geneva Convention to maritime warfare. It seems that this contradiction was only apparent; but in any case it disappears in the new wording.

With respect to the whole principle of Article 59, General MOUNIER had appeared rather inclined to ask that the sick and wounded be denied any passage, in view of the indirect service that the neutral State could render to one of the belligerents by making it easy for him to relieve himself of his wounded and sick. The whole subcommission was agreed that the neutral State should be guided by rules of absolute impartiality in lending its humane aid under such circumstances, and in the meeting of June 8 a sort of authentic commentary on the meaning of this article was proposed by Mr. BEERNAERT, accepted by General MOUNIER, and unanimously adopted. This official explanation is in the following terms:

This article has no other bearing than to establish that considerations of humanity and hygiene may determine a neutral State to allow wounded or sick soldiers to pass across its territory without failing in its duties of neutrality.

Finally Article 60 reproduces verbatim the final Article 56 of the Declaration of Brussels. It prescribes that the Geneva Convention applies to sick and wounded interned in neutral territory.

After the Commission shall have decided on the text of the project of the "Declaration respecting the laws and customs of war on land," its first care might be to consider under what form it would be preferable to sanction the obligatory character of the articles of this Declaration.

## DECLARATION RESPECTING THE LAWS AND CUSTOMS OF WAR ON LAND

### SECTION I.—BELLIGERENTS

#### CHAPTER I.—*Qualifications of belligerents*

##### ARTICLE 1

The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions:

1. That they be commanded by a person responsible for his subordinates;
2. That they have a fixed distinctive emblem recognizable at a distance;
3. That they carry arms openly; and
4. That they conduct their operations in accordance with the laws and customs of war.

[39] In countries where militia or volunteer corps constitute the army, or form part of it, they are included under the denomination "army."

## ARTICLE 2

The population of a territory which has not been occupied who, on the approach of the enemy, spontaneously take up arms to resist the invading troops without having had time to organize themselves in accordance with Article 1, shall be regarded as belligerents if they respect the laws and customs of war.

## ARTICLE 3

The armed forces of the belligerent parties may consist of combatants and noncombatants. In case of capture by the enemy, both have a right to be treated as prisoners of war.

CHAPTER II.—*Prisoners of war*

## ARTICLE 4

Prisoners of war are in the power of the hostile Government, but not in that of the individuals or corps who captured them.

They must be humanely treated.

All their personal belongings, except arms, horses, and military papers, remain their property.

## ARTICLE 5

Prisoners of war may be interned in a town, fortress, camp, or other place, under obligation not to go beyond certain fixed limits; but they can only be placed in confinement as an indispensable measure of safety.

## ARTICLE 6

The State may utilize the labor of prisoners of war according to their rank and aptitude. The tasks shall not be excessive and shall have no connection with the operations of the war.

Prisoners may be authorized to work for the public service, for private persons, or on their own account.

Work done for the State is paid for at the rates in force for work of a similar kind done by soldiers of the national army.

When the work is for other branches of the public service or for private persons, the conditions are settled in agreement with the military authorities.

The wages of the prisoners shall go towards improving their position, and the balance shall be paid them at the time of their release, after deducting the cost of their maintenance.

## ARTICLE 7

The Government into whose hands prisoners of war have fallen is charged with their maintenance.

In the absence of a special agreement between the belligerents, prisoners of war shall be treated as regards food, quarters, and clothing, on the same footing as the troops of the Government which has captured them.

[40]

## ARTICLE 8

Prisoners of war shall be subject to the laws, regulations, and orders in force in the army of the State in whose power they are. Any act of insub-

ordination justifies the adoption towards them of such measures of severity as may be necessary.

Escaped prisoners who are retaken before being able to rejoin their army or before leaving the territory occupied by the army that captured them are liable to disciplinary punishment.

Prisoners who, after succeeding in escaping, are again taken prisoners, are not liable to any punishment for the previous flight.

#### ARTICLE 9

Every prisoner of war is bound to give, if questioned on the subject, his true name and rank, and if he infringes this rule, he is liable to a curtailment of the advantages accorded to the prisoners of war of his class.

#### ARTICLE 10

Prisoners of war may be set at liberty on parole if the laws of their country allow it, and, in such cases, they are bound, on their personal honor, scrupulously to fulfill, both towards their own Government and the Government by which they were made prisoners, the engagements they have contracted.

In such cases their own Government is bound neither to require of nor accept from them any service incompatible with the parole given.

#### ARTICLE 11

A prisoner of war cannot be compelled to accept his liberty on parole; similarly the hostile Government is not obliged to accede to the request of the prisoner to be set at liberty on parole.

#### ARTICLE 12

Any prisoner of war liberated on parole and retaken bearing arms against the Government to which he had pledged his honor, or against the allies of that Government, forfeits his right to be treated as a prisoner of war, and can be brought before the courts.

#### ARTICLE 13

Individuals who follow an army without directly belonging to it, such as newspaper correspondents and reporters, sutlers and contractors, who fall into the enemy's hands, and whom the latter thinks fit to detain, are entitled to be treated as prisoners of war, provided they are in possession of a certificate from the military authorities of the army they were accompanying.

#### ARTICLE 14

An information bureau relative to prisoners of war is instituted, on the commencement of hostilities, in each of the belligerent States and, when necessary, in neutral countries which have received belligerents in their territory. The function of this bureau is to reply to all inquiries about the prisoners, to receive from the various services concerned all the information necessary to enable it to make out an individual return for each prisoner of war. It is kept informed of internments and transfers, as well as of admissions into hospitals and deaths.

[41] It is likewise the function of the information bureau to receive and collect all objects of personal use, valuables, letters, etc., found on the field of battle

or left by prisoners who have died in hospitals or ambulances, and to forward them to those concerned.

#### ARTICLE 15

Relief societies for prisoners of war, which are properly constituted in accordance with the laws of their country and with the object of serving as the channel for charitable effort shall receive from the belligerents, for themselves and their duly accredited agents, every facility for the efficient performance of their humane task within the bounds imposed by military necessities and administrative regulations. Agents of these societies may be admitted to the places of internment for the purpose of distributing relief, as also to the halting-places of repatriated prisoners, if furnished with a personal permit by the military authorities, and on giving an undertaking in writing to comply with all measures of order and police which the latter may issue.

#### ARTICLE 16

Information bureaus enjoy the privilege of free postage. Letters, money orders and valuables, as well as parcels by post, intended for prisoners of war, or dispatched by them, shall be exempt from all postal duties in the countries of origin and destination, as well as in the countries they pass through.

Presents and relief in kind for prisoners of war shall be admitted free of all import or other duties, as well as of payments for carriage by State railways.

#### ARTICLE 17

Officers taken prisoners may receive, if necessary, the full pay allowed them in this position by their country's regulations, the amount to be refunded by their Government.

#### ARTICLE 18

Prisoners of war shall enjoy complete liberty in the exercise of their religion, including attendance at the services of whatever church they may belong to, on the sole condition that they comply with the measures of order and police issued by the military authorities.

#### ARTICLE 19

The wills of prisoners of war are received or drawn up in the same way as for soldiers of the national army.

The same rules shall be observed regarding death certificates as well as for the burial of prisoners of war, due regard being paid to their grade and rank.

#### ARTICLE 20

After the conclusion of peace, the repatriation of prisoners of war shall be carried out as quickly as possible.



CHAPTER III.—*The sick and wounded*

## ARTICLE 21

The obligations of belligerents with regard to the sick and wounded are governed by the Geneva Convention of August 22, 1864, subject to any modifications which may be introduced into it.

[42]

## SECTION II.—ON HOSTILITIES

CHAPTER I.—*Means of injuring the enemy, sieges, and bombardments*

## ARTICLE 22

The right of belligerents to adopt means of injuring the enemy is not unlimited.

## ARTICLE 23

In addition to the prohibitions provided by special conventions, it is especially forbidden:

- (a) To employ poison or poisoned weapons;
- (b) To kill or wound treacherously individuals belonging to the hostile nation or army;
- (c) To kill or wound an enemy who, having laid down his arms, or having no longer means of defense, has surrendered at discretion;
- (d) To declare that no quarter will be given;
- (e) To employ arms, projectiles, or material calculated to cause unnecessary suffering;
- (f) To make improper use of a flag of truce, of the national flag, or of the military insignia and uniform of the enemy, as well as the distinctive badges of the Geneva Convention;
- (g) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war.

## ARTICLE 24

Ruses of war and the employment of measures necessary for obtaining information about the enemy and the country are considered permissible.

## ARTICLE 25

It is forbidden to attack or bombard towns, villages, dwellings or buildings that are not defended.

## ARTICLE 26

The officer in command of an attacking force must, before commencing a bombardment, except in cases of assault, do all in his power to warn the authorities.

## ARTICLE 27

In sieges and bombardments all necessary steps must be taken to spare, as

far as possible, buildings dedicated to religion, art, science, or charitable purposes, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes.

It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand.

#### ARTICLE 28

It is forbidden to give over to pillage even a town or place taken by storm.

### CHAPTER II.—*Spies*

[43]

#### ARTICLE 29

A person can only be considered a spy when, acting clandestinely or on false pretenses, he obtains or endeavors to obtain information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party.

Thus, soldiers not wearing a disguise who have penetrated into the zone of operations of the hostile army, for the purpose of obtaining information, are not considered spies. Similarly, the following are not considered spies: Soldiers and civilians carrying out their mission openly, entrusted with the delivery of dispatches intended either for their own army or for the enemy's army. To this class belong likewise persons sent in balloons for the purpose of carrying dispatches and, generally, of maintaining communications between the different parts of an army or a territory.

#### ARTICLE 30

A spy taken in the act shall not be punished without previous trial.

#### ARTICLE 31

A spy who, after rejoining the army to which he belongs, is subsequently captured by the enemy, is treated as a prisoner of war, and incurs no responsibility for his previous acts of espionage.

### CHAPTER III.—*Parlementaires*

#### ARTICLE 32

A person is regarded as a parlementaire who has been authorized by one of the belligerents to enter into communication with the other, and who advances bearing a white flag. He has a right to inviolability, as well as the trumpeter, bugler or drummer, the flag-bearer and the interpreter who may accompany him.

#### ARTICLE 33

The commander to whom a parlementaire is sent is not in all cases obliged to receive him.

He may take all necessary steps in order to prevent the parlementaire taking advantage of his mission to obtain information.

In case of abuse, he has the right to detain the parlementaire temporarily.

## SECOND COMMISSION

## ARTICLE 34

The parlementaire loses his rights of inviolability if it is proved in a clear and incontestable manner that he has taken advantage of his privileged position to provoke or commit an act of treason.

CHAPTER IV.—*Capitulations*

## ARTICLE 35

Capitulations agreed upon between the contracting parties must take into account the rules of military honor.

[44] Once settled, they must be scrupulously observed by both parties.

CHAPTER V.—*Armistices*

## ARTICLE 36

An armistice suspends military operations by mutual agreement between the belligerent parties. If its duration is not defined, the belligerent parties may resume operations at any time, provided always that the enemy is warned within the time agreed upon, in accordance with the terms of the armistice.

## ARTICLE 37

An armistice may be general or local. The first suspends the military operations of the belligerent States everywhere; the second only between certain fractions of the belligerent armies and within a fixed radius.

## ARTICLE 38

An armistice must be notified officially and in good time to the competent authorities and to the troops. Hostilities are suspended immediately after the notification, or on the date fixed.

## ARTICLE 39

It rests with contracting parties to settle, in the terms of the armistice, what communications may be held in the theater of war with the populations and between them.

## ARTICLE 40

Any serious violation of the armistice by one of the parties gives the other party the right of denouncing it, and even, in cases of urgency, of recommencing hostilities immediately.

## ARTICLE 41

A violation of the terms of the armistice by private persons acting on their own initiative only entitles the injured party to demand the punishment of the offenders and, if necessary, compensation for the losses sustained.

## SECTION III.—ON MILITARY AUTHORITY OVER THE TERRITORY OF THE HOSTILE STATE

## ARTICLE 42

Territory is considered occupied when it is actually placed under the authority of the hostile army.

The occupation extends only to the territory where such authority has been established and can be exercised.

## ARTICLE 43

The authority of the legitimate Power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore [45] and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

## ARTICLE 44

It is forbidden to force the population of occupied territory to take part in military operations against its own country.

## ARTICLE 45

It is forbidden to compel the population of occupied territory to swear allegiance to the hostile Power.

## ARTICLE 46

Family honor and rights, the lives of persons, and private property, as well as religious convictions and practices, must be respected.

Private property cannot be confiscated.

## ARTICLE 47

Pillage is formally forbidden.

## ARTICLE 48

If, in the territory occupied, the occupant collects the taxes, dues, and tolls imposed for the benefit of the State, he shall do so, as far as is possible, in accordance with the rules of assessment and incidence in force, and shall in consequence be bound to defray the expenses of the administration of the occupied territory to the same extent as the legitimate Government was so bound.

## ARTICLE 49

If, in addition to the taxes mentioned in the above article, the occupant levies other money contributions in the occupied territory, this shall only be for the needs of the army or of the administration of the territory in question.

## ARTICLE 50

No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible.

## SECOND COMMISSION

## ARTICLE 51

No contribution shall be collected except under a written order, and on the responsibility of a commander in chief.

The collection of said contribution shall only be effected as far as possible in accordance with the rules of assessment and incidence of the taxes in force.

For every contribution a receipt shall be given to the contributors.

## ARTICLE 52

Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the population in the obligation of taking part in the operations of the war against their country.

Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied.

Contributions in kind shall, as far as possible, be paid for in cash; if not, a receipt shall be given.

[46]

## ARTICLE 53

An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for the operations of the war.

Railway plant, land telegraphs, telephones, steamers and other ships, apart from cases governed by maritime law, as well as depots of arms and generally all kinds of munitions of war, even though belonging to companies or to private persons, are likewise material which may serve for military operations, but they must be restored and compensation fixed when peace is made.

## ARTICLE 54

The plant of railways coming from neutral States, whether the property of those States or of companies or of private persons, shall be sent back to them as soon as possible.

## ARTICLE 55

The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.

## ARTICLE 56

The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property shall be treated as private property.

All seizure or destruction of, or willful damage to, institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.

SECTION IV.—ON THE INTERNMENT OF BELLIGERENTS AND THE CARE OF  
THE WOUNDED IN NEUTRAL COUNTRIES

ARTICLE 57

A neutral State which receives on its territory troops belonging to the belligerent armies shall intern them, as far as possible, at a distance from the theater of war.

It may keep them in camps, and even confine them in fortresses or in places set apart for this purpose.

It shall decide whether officers can be left at liberty on giving their parole not to leave the neutral territory without permission.

ARTICLE 58

In the absence of a special convention, the neutral State shall supply the interned with the food, clothing, and relief required by humanity.

At the conclusion of peace the expenses caused by the internment shall be made good.

ARTICLE 59

A neutral State may authorize the passage over its territory of wounded or sick belonging to the belligerent armies, on condition that the trains bringing [47] them shall carry neither personnel nor material of war. In such a case, the neutral State is bound to take whatever measures of safety and control are necessary for the purpose.

Wounded or sick brought under these conditions into neutral territory by one of the belligerents, and belonging to the hostile party, must be guarded by the neutral State, so as to ensure their not taking part again in the operations of the war. The same duty shall devolve on the neutral State with regard to wounded or sick of the other army who may be committed to its care.

ARTICLE 60

The Geneva Convention applies to sick and wounded interned in neutral territory.

## FIRST SUBCOMMISSION

### FIRST MEETING

MAY 25, 1899

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**Mr. Asser** presiding.

**Mr. Asser** thanks the subcommission for having chosen him as president, and he will count on its good-will to aid him in his task.

He refers to the fact that the competency of the subcommission is limited to an examination of Nos. 5 and 6 of the **MOURAVIEFF** circular, but that it should have the greatest freedom in extending its discussion to all questions connected with these two parts of the program outlined.

The **PRESIDENT** reads Articles 5 and 6 of the circular of December 30, 1898. He opens the discussion on the first of these articles, asking the subcommission to answer as a preliminary the following questions:

1. Is it desirable to adapt to maritime wars the stipulations of the Geneva Convention of 1864 on the basis of the additional articles of 1868?

This principle is adopted without remarks.

2. Can the additional articles of 1868 be considered as capable of constituting the best basis for such adaptation?

This view is likewise adopted by the subcommission.

The **PRESIDENT** says that he will successively read Articles 6 to 15 of the provisions of October 20, 1868, in order to call forth discussion on each of them.

Article 6 is now read:

The boats which, at their own risk and peril, during and after an engagement pick up the shipwrecked or wounded, or which having picked them up, convey them on board a neutral or hospital ship, shall enjoy, until the accomplishment of their mission, the character of neutrality, as far as the circumstances of the engagement and the position of the ships engaged will permit.

The appreciation of these circumstances is entrusted to the humanity of all the combatants. The wrecked and wounded thus picked up and saved must not serve again during the continuance of the war.

Commander **Scheine** thinks that it will be necessary to specify that the vessels which are admitted to the field of battle by virtue of this article shall not be independent of superior command but subordinate to the admirals in chief command of either belligerent party. He thinks that a provision to this effect will prevent the invasion of the field of battle by vessels of a private character.

**Mr. Renault** says that in his opinion the vessels organized by private relief societies ought not to be independent in action but be attached officially to one or other of the belligerents. He adds that from an international standpoint, it is important that neutral vessels should not be allowed to enter the field of battle under the pretext that they are covered by the Red Cross. It will there-

fore be necessary that the vessels mentioned in Article 6, in order to be entitled to special immunities, be placed under the direct authority of one or other of the belligerents. Mutual communications might be made in order to notify their character.

[49] Captain **Mahan** observes that the first requisite for admittance to the field of battle ought to be to fly the flag of one or other of the belligerents.

Admiral **Péphau** adds that it would be well if the vessels presenting themselves under these conditions were easily recognizable by means of distinctive signs such as a special painting.

Mr. **Renault** thinks that the question of the flag, as raised by Mr. **MAHAN**, ought to come under the examination of Article 12.

Article 7 is now read:

The religious, medical, and hospital staff of any captured vessel are declared neutral. On leaving the vessel, they remove the articles and surgical instruments which are their private property.

Captain Count **Soltyk** thinks that there would be great disadvantages connected with the release of the religious, medical, and hospital staff of a captured ship. He thinks that the commander of such a vessel ought to be authorized to keep this staff under his surveillance.

Commander **Scheine** says that a provision might be inserted leaving it to the discretion of the commander in chief to decide what measures the situation warrants him in taking in regard to the personnel in question.

Mr. **Papiniu** thinks that a distinction ought to be made between the neutrality and the inviolability of this personnel.

The **President** observes that in his opinion neutrality implies inviolability.

Captain **Mahan** suggests the fixing of a period after which the medical and religious personnel of a captive vessel ought necessarily to be released.

The subcommission takes note of these various observations.

Article 8 is now read, and gives rise to no observations.

The staff designated in the preceding article must continue to fulfill their functions in the captured ship, assisting in the removal of the wounded made by the victorious party; they will then be at liberty to return to their country, in conformity with the second paragraph of the first additional article.

The stipulations of the second additional article are applicable to the pay and allowance of the staff.

The **President** now reads Article 9.

Military hospital ships remain subject to the laws of war as regards their material; they become the property of the captor, but the latter cannot divert them from their special purpose during the continuance of the war.

Mr. **Renault** recalls the fact that the questions raised by this article stood in the way of ratification. He proposes to reserve it for a second reading.

Article 10 is now read:

Any merchantman, to whatever nation she may belong, charged exclusively with removal of sick and wounded, is protected by neutrality, but the mere fact, noted on the ship's books, of the vessel having been visited by an enemy's cruiser, renders the sick and wounded incapable of serving during the continuance of the war. The cruiser shall even have the



right of putting on board an officer in order to accompany the convoy, and thus verify the good faith of the operation.

If the merchant ship also carries a cargo, her neutrality will still protect it, provided that such cargo is not of a nature to be confiscated by the belligerents.

The belligerents retain the right to interdict neutralized vessels from all communication, and from any course which they may deem prejudicial to the secrecy of their operations. In urgent cases special conventions may be entered into between commanders in chief, in order to neutralize temporarily and in a special manner the vessels intended for the removal of the sick and wounded.

The **President** thinks that the term "merchantman" is too restricted. The intention is to indicate all vessels which are not war vessels.

Admiral **Pépau** says that a merchantman is any vessel not belonging to the State.

Mr. **Scheine** says that it ought to be stipulated that the fact of a vessel of this nature being searched by a hostile cruiser is equivalent to a capture of the sick and wounded as prisoners of war.

Article 11 is now read:

Wounded or sick sailors and soldiers, when embarked, to whatever nation they may belong, shall be protected and taken care of by their captors.

Their return to their own country is subject to the provisions of Article 6 of the Convention, and of the additional Article 5.

[50] Mr. **Renault** says that this article can be criticized both as to substance and form. It ought to be made the subject of a serious examination on the part of the subcommission.

Article 12 is now read:

The distinctive flag to be used with the national flag, in order to indicate any vessel or boat which may claim the benefits of neutrality, in virtue of the principles of this Convention, is a white flag with a red cross. The belligerents may exercise in this respect any mode of verification which they may deem necessary.

Military hospital ships shall be distinguished by being painted white outside, with green strake.

Mr. **Scheine** asks that the white flag with red cross shall always appear underneath the national flag. In the second place he expresses the wish that hospital ships may be of a type which will not enable them to be transformed so as to serve for war purposes.

Admiral **Pépau** thinks that the lack of arms and war material on board these vessels will constitute a sufficient guaranty, but it would be too much to require them to be constructed after a certain type.

Such an obligation would prevent the utilization of mail ships owing to the ease of transforming them into war vessels.

Mr. **Renault** thinks that the communication made in advance to the belligerents will prevent any fraud.

Mr. **Scheine** does not insist on his proposition, but asks that note be taken thereof.

Article 13 is then read:

The hospital ships which are equipped at the expense of the aid societies, recognized by the Governments signing this Convention, and which are furnished with a commission

emanating from the sovereign, who shall have given express authority for their being fitted out, and with a certificate from the proper naval authority that they have been placed under his control during their fitting out and on their final departure, and that they were then appropriated solely to the purpose of their mission, shall be considered neutral, as well as the whole of their staff. They shall be recognized and protected by the belligerents.

They shall make themselves known by hoisting, together with their national flag, the white flag with a red cross. The distinctive mark of their staff, while performing their duties, shall be an armlet of the same colors. The outer painting of these hospital ships shall be white, with red strake.

These ships shall bear aid and assistance to the wounded and wrecked belligerents, without distinction of nationality.

They must take care not to interfere in any way with the movements of the combatants. During and after the battle they must do their duty at their own risk and peril.

The belligerents shall have the right of controlling and visiting them; they will be at liberty to refuse their assistance, to order them to depart, and to detain them if the exigencies of the case require such a step.

The wounded and wrecked picked up by these ships cannot be reclaimed by either of the combatants, and they will be required not to serve during the continuance of the war.

The **President** thinks that the observation in regard to the necessity for the double flag may also be applied to this article.

Mr. **Renault** says in this connection that there are some provisions that ought to be generalized.

Article 14 is now read:

In naval wars any strong presumption that either belligerent takes advantage of the benefits of neutrality, with any other view than the interest of the sick and wounded, gives to the other belligerent, until proof to the contrary, the right of suspending the Convention, as regards such belligerent.

Should this presumption become a certainty, notice may be given to such belligerent that the Convention is suspended with regard to him during the whole continuance of the war.

Mr. **RENAULT** says that this article will disappear. The subcommission will return to it later on.

The **President** now reads Article 15 (*The present act shall be drawn up in a single original, etc.*), and declares closed the general and provisional discussion of the articles submitted to the examination of the subcommission.

Mr. **Odier** asks whether all the members of the subcommission are really agreed to proceed to examine, article by article, the text intended to be adapted to maritime wars.

He thinks that this course of action has not the approval of the representatives of all the Governments.

Mr. **Asser** says that the competency of the subcommission has been clearly defined and he thought that an agreement had been reached on this point.

Baron **von Stengel** says that he does not deem it useful to examine the [51] additional articles one by one, but thinks it would be preferable to refer them for study to a special conference having full power to adopt formal texts.

Mr. **Asser** recalls the fact that the Conference in plenary session decided that while the Commission was not competent to revise the Geneva Convention, it nevertheless had full latitude to formulate resolutions on Nos. 5 and 6 of the **MOURAVIEFF** circular. He does not believe that the subcommission can go to

the length of a decision, which for that matter the Conference could revoke if it deemed proper.

Before adjourning the meeting, the **President** says he deems it preferable for the subcommission to postpone the appointment of its reporter.

This motion is carried.

# SECOND MEETING

MAY 30, 1899

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Mr. Asser presiding.

The minutes of the meeting of May 25 are read and adopted.

The **President** recalls the fact that the subcommission is to pursue, in regard to the various articles submitted to it, a discussion in which only personal opinions are to be expressed which by no means pledge the respective Governments.

He says that after the tentative exchange of views which took place during the first reading of the additional articles, the subcommission will be able, at the second reading, to take up the examination of these provisions in a more precise and systematic manner.

He proposes to group the different provisions in categories, on each of which a special discussion may be held. The provisions desired may then be framed.

Mr. ASSER adds that it would be advantageous, when these points were settled, to intrust to a special committee the task of drawing up final propositions which will be printed and distributed among all members. (*Adopted.*)

## *Subdivision of subjects into four groups*

The **President** suggests the following subdivision of the subjects to be examined:

1st group: Provisions concerning vessels (Articles 6, 9, 10, 12, and 13.)

2nd group: Provisions concerning personnel of every kind (Articles 7, 8, and 11.)

3rd group: General provisions (Article 14).

Mr. **Renault** says that he fully approves the order proposed by the **PRESIDENT**.

He wishes merely to observe that the questions relating to the status of the sick and wounded are distributed among Articles 6, 8, 10, and 13.

It would therefore be useful to create for the examination of these questions a new group which might occur before the group entitled "General provisions."

The **President** thinks that this view will be approved without any trouble.

It is therefore agreed that the third group shall concern the wounded and shipwrecked and the fourth the general provisions.

Discussion is now begun on the first group.

## *First group.—VESSELS*

The **PRESIDENT** says that four categories should be distinguished under the denomination "vessels":

1. Military hospital ships;

2. Merchant vessels;

3. Hospital ships equipped at the expense of relief societies;

[52] 4. Boats (provided for in Article 6);

Mr. **Asser** asks whether this distinction ought to be maintained.

Mr. **Siegel** observes that in his opinion a boat is a direct appurtenance of a ship to which it belongs; he thinks that Article 6 contemplates likewise boats which are disconnected with the belligerent vessels.

Mr. **Asser** recalls the fact that the subcommission decided at its previous meeting that in order to enjoy the immunities provided in Article 6, boats should be obliged to sail under the flag of one or the other of the belligerents.

Mr. **Siegel** says that in subjecting boats to this decision the purpose in view is to facilitate for the superior commander the supervision of the ships admitted to the field of battle.

Nevertheless this question causes some difficulties.

The vessels in question may be of two kinds:

1. Hospital ships equipped at the expense of relief societies, recognized and commissioned by their Governments.

2. Merchant vessels, pleasure and fishing craft, etc., which happen to be on the field of battle.

Mr. **SIEGEL** is of opinion that the former may be assimilated to Government vessels and that to compel them to fly a foreign flag would be an act incompatible with the sovereignty of the State to which they belong, an act which might be considered unfriendly to the Power not favored and which might perhaps even constitute a violation of strict neutrality for the benefit of one of the belligerents.

If freedom is granted to merchant vessels to fly, if they deem fit, a foreign flag together with the flag of their own country, there would still remain the fact that an unfriendly act was being committed, which would probably increase the risks of the enterprise.

Mr. **SIEGEL** adds that it seems to him useful, under these circumstances, to leave to hospital ships the right to fly, together with the white flag with red cross, exclusively their national flag, adding thereto, if deemed necessary, a distinctive mark to be determined upon.

Mr. **Renault** thinks that the question might be reserved. He says that, in his opinion, the method which ought logically to be followed in the discussion would be as follows: We must first examine the question of the treatment to be accorded to each of the several categories of hospital ships, and not until we come to regulating the details of the intervention of neutral vessels will it be possible to examine profitably the proposition of Mr. **SIEGEL**.

Mr. **Siegel** is not opposed to this postponement, which is decided upon.

### *First category: Article 9*

Article 9 and the additional paragraph thereof are now read:

At the request of Mr. **SCHEINE**, Mr. **Renault** declares that the French delegation maintains the terms of the proposition made by France in 1869 with the consent of the British Government to the effect that Government hospital ships should be exempt from capture provided they have not on board either arms,

ammunition, or war material. It would be useful to add to this provision a clause to the effect that the existence of these vessels should be made known officially by the one belligerent to the other.

Count **Soltyk** asks whether a distinction ought to be made between the hospital ships referred to in Article 9 and the floating maritime hospitals contemplated in the additional article. Are these latter unfit for navigation?

Mr. **Renault** says it is desirable to find a form of wording which will blend Article 9 and its additional provision in such a way as to take into account only the latter.

The **President** says he is going to put to a vote the proposition of the French delegation together with the German amendment relative to the previous and reciprocal communication from one belligerent to another.

Mr. **Scheine** asks that the following proposition be passed upon:

The combatants shall have a right to prohibit these ships from making any communication or taking any direction, and even to stop them, if they deem it necessary in order to guard the secrecy of the war operations.

Mr. **Renault** and Admiral **Péphau** are of opinion that this proposition, which may be applied to all vessels in general, might be given a place, after being properly worded, among the provisions suggested by the French delegation.

[53] Mr. **Ovtchinnikow** asks that it be carefully stipulated that the vessels contemplated in the additional paragraph of Article 9 must be stripped of all war material and shall not serve either for reconnaissance or for military observations.

Admiral **Péphau** says that this interpretation naturally arises from the very text of the article which states that the armament "*must be appropriated to the special purpose of the vessels referred to.*"

We might, however, insist more strongly in the final draft on these vessels being *exclusively hospital in character*.

The **President** puts the proposition of the French delegation to a vote.

This proposition is carried by 14 votes to 2.

*Voting for:* Germany, Austria-Hungary, Denmark, Spain, France, Italy, Japan, the Netherlands, Roumania, Siam, Sweden and Norway, Switzerland, and Turkey.

*Voting against:* The United States of America and Great Britain.

The **President** puts to a vote the proposition of Mr. **SCHEINE** relating to the rights of the combatants with respect to the movements of the hospital ships.

This proposition is adopted unanimously by the aforementioned delegations, with the exception of Switzerland, which declared that it would abstain.

### *Second category: Article 10*

The **President** opens the discussion on the second category of ships and reads Article 10.

He recalls the fact that the British Government expressed certain doubts with respect to the interpretation of this article as regards the cargo, which doubts ought to be taken into account in the final draft.

Mr. **Renault** says that the obscurity of Article 10 is due to the fact that an attempt was made to regulate two absolutely different cases by means of one

common provision, that is, the case in which the evacuation service is attended to by a belligerent merchant vessel and the case in which it is attended to by a neutral merchant vessel.

He thinks that the discussion would gain in clearness if a distinction were made between the two cases.

Baron von Stengel remarks that the word *neutral* is often used in the sense of *inviolable*, and that it is nevertheless desirable to make a distinction between *neutrality* and *inviolability*, the first of these qualities not necessarily implying the second.

Mr. Motono seconds the motion of Mr. RENAULT and says that the proposed distinction should be made particularly in case a merchant vessel belonging to one of the belligerent parties has only two or three wounded persons on board. In this case the hostile vessel should not escape capture.

The President proposes that the division suggested by Mr. RENAULT be adopted, and that the case of a *belligerent merchant vessel* be examined first.

Mr. Renault states that in this case also it would be well to distinguish between vessels laden *exclusively* with sick and wounded, which ought to escape capture, and those which, not fulfilling these conditions, should be subject to the common law.

The President says that in the second place it will be necessary to examine the case of a *merchant vessel belonging to neutrals*.

Mr. Thaulow observes that it ought to be distinctly stipulated that vessels not *exclusively* devoted to the transportation of sick and wounded would not enjoy immunity from capture.

Mr. Renault says that the subdistinction which he has just proposed answers this very observation.

At the request of Messrs. SIEGEL and SOLTYK, it is decided that the terms "*sick and wounded whom it is engaged in evacuating*" shall be superseded by "*. . . whom it is engaged in transporting.*" (*Adopted.*)

Mr. Renault says that as the treatment of *belligerent* merchant vessels has been settled, it will now be necessary to take up the treatment of *neutral* merchant vessels.

Mr. Asser expresses the opinion that the latter are governed by the common law in this way, that the sick and wounded on board these neutral vessels are to be assimilated to the cargo and should consequently be covered by the neutrality of the ship.

Mr. Renault remarks that a formal rule should be laid down in the case where a neutral vessel has gathered up sick or wounded of a belligerent.

Strictly speaking, the other belligerent might complain that the neutral vessel [54] had assisted his adversary and consequently seize it for violation of neutrality. We are agreed that this should not be so; but we must say so and set aside the common law.

Mr. Asser states that this interpretation is agreed upon.

Mr. Scheine asks that it be understood that by neutral vessels should be meant those which have not compromised their neutrality either by carrying contraband of war or by violating a blockade.

Note is taken of this observation.

The President consults the subcommission on the whole set of propositions

relating to the second category (merchant vessels), and states that there is unanimous agreement as to the various questions.

The **PRESIDENT**, passing on to the *third category*, reads Article 13.

Mr. **Motono** says that the provisions of the Geneva Convention of 1864 and the additional articles of 1868 did not provide for the case of the transportation by sea of the sick and wounded of land armies.

Nevertheless, this case has arisen in practice, during the Chino-Japanese war, and it deserves to be taken into serious consideration.

Mr. **MOTONO** reserves the right to present at the proper time a proposition contemplating this special contingency.

**Noury Bey** declares that he joins in this suggestion, the appropriateness of which was also demonstrated in the Greco-Turkish war.

Mr. **Asser** observes that the modification decided on in Article 10 and the substitution of the word *transporting* instead of *evacuating* to a certain extent satisfy the desire expressed by Mr. **MOTONO**.

Mr. **Motono** insists on the necessity of inserting a special clause.

The **President** says that this matter will be taken into account in the ultimate draft.

Mr. **Renault** asks to specify that the rule with respect to previous and reciprocal communication adopted in regard to the vessels contemplated in Article 9 shall apply likewise to the two categories under the consideration of the sub-commission.

After an exchange of observations between Admiral **FISHER**, Mr. **RENAULT**, and Mr. **OVTCHINNIKOW**, the subcommission agrees to compel neutral hospital ships intervening on a field of battle to subordinate their action directly to the authority and supervision of the commanders in chief of the belligerent parties.

#### *Fourth category: Article 6*

The **President** reads Article 6, which relates to the fourth category of relief vessels (boats).

Mr. **Ovtchinnikow** requests some explanations on the exact meaning of the term "*boats*." He observes that boats are of several kinds, and that some of them may be provided with an armament which makes them fall under the law of war. He thinks that it would be well to avoid any confusion by adopting another term.

Admiral **Péphau** says that boats ought to cease to be neutral as soon as their relief mission terminates; he sees no possible difficulties in the interpretation of Article 6.

Mr. **Asser** says that the drafting committee will take note of the observation of Mr. **OVTCHINNIKOW**, and that with this reservation he considers the discussion as being closed regarding the four categories of vessels which were to be examined.

#### *Question of the flag*

The **President** proposes that the discussion of the *flag question* be now taken up.

He recalls the fact that the subcommission, at its previous meeting, had decided that all vessels claiming the immunities provided in the additional



articles would have to sail under the flag of one or the other of the belligerents. Mr. SIEGEL thought that this provision would interfere with the sovereignty of the States to which these vessels belong and might even constitute a violation of strict neutrality for the benefit of one of the belligerents. He consequently asked that the flag of the Red Cross and that of the belligerent State to which the relief vessel is attached — three different flags — be shown simultaneously.

Does the delegate from Germany insist on his proposition?

Mr. Siegel declares that he maintains it.

[55] After an exchange of observations participated in by Messrs. SCHEINE, MOTONO, MAHAN, PÉPHAU, FISHER, and SOLTYK, it is understood that a precise text will be submitted on this question to the subcommission at its next meeting.

Noury Bey wishes to declare that whenever Turkish relief ships have to perform their mission, the emblem of the Red Cross will be replaced on their special flag by the Red Crescent.

The subcommission takes note of this declaration.

The President proposes that a committee of four members be designated, to which will be intrusted the task of preparing the final draft of the propositions which have been subjected to discussion.

This committee will be composed of Admiral FISHER, Commander SIEGEL, Commander SCHEINE, and Professor RENAULT.

This motion is carried and the meeting adjourns until Thursday, June 1, at 10 o'clock.

# THIRD MEETING

JUNE 1, 1899

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Mr. Asser presiding.

The minutes of the second meeting are read and adopted.

Mr. Asser recalls the fact that at the end of the preceding meeting the subcommission had referred the examination of the questions relating to the flag to the drafting committee, which was to undertake to adopt a precise form of wording on which an agreement might be reached.

As this committee will probably bring in a proposition on this question which will receive all the votes, Mr. Asser thinks that it will be better to postpone the vote until a subsequent meeting. (*Adopted.*)

The President says that as the subcommission has terminated the examination on second reading of the first group of subjects, it will pass to the *second group* (medical, religious, and sanitary personnel, etc., Articles 7-8).

The President reads Article 7.

He reads an extract from a work by Mr. PAUL FAUCHILLE, director of the *Revue générale de droit international public*. (Relief to the wounded and shipwrecked in maritime war.)

As no member requests the floor regarding Article 7, the President declares that the principle embodied in this article is adopted, subject to rewording.

The President now reads Article 8.

Mr. Scheine declares that he indorses the principle involved in this article, with the understanding, however, that the captured personnel shall remain at the disposal of the captor and will not be placed at liberty until the latter deems it possible.

Mr. Renault states that the subcommission is agreed and that it will be desirable to find a wording for Article 8 which shall be self-sufficient and embody the whole solution, without the necessity of an additional paragraph.

The President, after declaring the principle involved in Article 8 to be adopted, passes on to the *third group* of subjects (sick, wounded, and shipwrecked, Articles 6-10, 11-13).

In regard to Article 11, the President remarks that the text of this article makes reference to Article 6, which lays down a fundamental principle, to wit, that the wounded and shipwrecked gathered up by relief vessels shall not be allowed to serve again during the course of the war.

Mr. Scheine asks that it be well understood that the sick, wounded, and shipwrecked shall become prisoners of war by virtue of the sole fact of the search, by a belligerent ship, of the vessel on board of which they have been taken. He thinks it would be well to lay down in this connection a general principle to apply to all vessels, whether military or commercial.

Mr. Siegel observes that the wording of Article 10 contemplates only [56] merchant vessels, in regard to which it satisfies the desire expressed by Mr.

SCHEINE.

The **President** says that the question cannot be put in connection with Government hospital ships. As to merchant vessels, their status is regulated by Article 13, the sixth paragraph of which contains even more general provisions in their regard than those stipulated by Article 10.

After an exchange of views among Messrs. SCHEINE, MAHAN, and RENAULT, the **PRESIDENT** declares adopted the motion of Mr. SCHEINE relating to the capture of the sick and wounded by virtue of the fact of a search by one of the belligerent ships. He declares the principle involved in Articles 6, 10, 11, and 13 adopted, under reservation of the modifications asked.

Mr. **Renault** says that before taking up the examination of the fourth group of subjects, the subcommission ought to examine a case which was not foreseen by the additional articles; that of a hospital ship laden with sick and wounded and calling at a neutral port.

It may be asked whether it has a right to deposit these sick or shipwrecked persons, whether the neutral may receive them without violating his neutrality, and what the obligations of the neutral are in this case.

The subcommission might usefully foresee and regulate this question, leaving it to the drafting committee to draw up a final proposition afterwards.

At the invitation of the **PRESIDENT**, Mr. RENAULT recalls the fact that several years ago Captain HOUETTE was the first to call attention to the aforementioned case and that he proposed to regulate it by means of the following provision:

The belligerents may always land their sick and wounded of any nationality in a neutral port provided with adequate hospital establishments. By virtue of the fact of their being landed, these sick and wounded will be incapable of serving again during the war, and all expenses of hospital care shall be borne by the nation of the vessel which has landed them.

Mr. RENAULT thinks that there ought to be added to this provision the obligation on the part of the neutral Government which receives the wounded and shipwrecked persons to intern them.

The **President** reads a passage from the above-cited work of Mr. FAUCHILLE, which applies to the same supposed case. He asks the subcommission to exchange its views regarding the question propounded by Mr. RENAULT.

Baron **von Stengel** says that he indorses the proposition of Mr. RENAULT and insists that the neutral Government shall be obliged to intern the wounded persons landed on its territory.

Mr. **Renault** does not think that they should take the trouble to regulate the status of the vessel which has landed the wounded persons.

This status is regulated by the common law, but he is of opinion that at all events some clear and simple general principles should be laid down which actual practice will attend to developing.

Mr. **Motono** asks whether this must be considered as an obligation on the part of a neutral country to receive the wounded persons landed on its territory.

Mr. **Renault** answers that the juridical idea which dominates his proposition is as follows: *that the neutral country will not be violating neutrality by receiving the wounded persons.* However, it will be impossible to impose on this country the obligation to receive them, this being left to its humane discretion. As regards the expenses of hospital care and others, they ought naturally to be borne by the State to which the sick and wounded belong.

The drafting committee will, at all events, propose texts to cover all these phases of the question.

The **President** states that the subcommission is agreed to accept the principle involved in the proposition of Mr. RENAULT, subject to change in wording.

Mr. ASSER now takes up the *fourth group of subjects* (General Provisions), and reads Article 14.

He says that in his opinion it would be useless and even unwise to maintain in the convention the provisions stipulated by this article, which might perhaps be considered as an invitation to violate the convention. The **PRESIDENT** therefore proposes to abolish Article 14.

Captain **Bianco** sees objections to abolishing Article 14; however, by reason of the guaranties insured by the wording of Article 13, he does not insist on the maintenance of Article 14.

The **President** states that there is an agreement on this point and that his proposal to abolish Article 14 is adopted.

Mr. **Scheine** would like to have the question of maritime parlementaires considered by the subcommission.

The **President** says that the second subcommission intrusted with examining [57] the Brussels Act on the usages of war is perhaps more competent to consider this question; he thinks, however, that it would be possible to connect it with Article 6 of the circular of Count MOURAVIEFF.

Mr. **Renault** is of opinion that the status of parlementaires ought to be regulated by the general law of maritime war.

As Mr. SCHEINE insists that this special case be regulated by the subcommission, the **President** declares that the question is referred to the drafting committee.

The **PRESIDENT** consults the subcommission as to whether it deems it useful to draw up a special text in regard to the application to shipwrecked persons of the additional provisions of the Geneva Convention. He recalls the fact that this question constitutes No. 6 of the MOURAVIEFF circular.

Mr. **Renault** is of opinion that by laying down sufficiently broad general principles to apply to all relief ships carrying sick, wounded, and shipwrecked persons, the subcommission will have exactly corresponded to the two points Nos. 5 and 6 of the Russian program.

Mr. **Scheine**, on behalf of the Russian delegation, declares that he accepts this view.

The **President** proposes to pass on to the discussion of the two propositions which Colonel GILINSKY deposited in the name of the Russian Imperial War Ministry at the last plenary session of the Second Commission.

As Mr. GILINSKY is not present at the meeting, Mr. **Scheine** asks that this discussion be postponed. (*Adopted.*)

The **President** says that the subcommission ought now to give its drafting committee time enough to prepare the text of the various propositions which it is to submit to it.

As soon as the committee has finished its work, the **PRESIDENT** will have the adopted formulas printed and distributed, accompanied by the necessary explanations, and he will call the subcommission together a few days after this distribution has been made.

The meeting adjourns.

## FOURTH MEETING

JUNE 13, 1899

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Mr. Asser presiding.

The minutes of the third meeting are read and adopted.

The President says that he has received from Mr. PAUL FAUCHILLE, director of the *Revue générale de droit international public*, a certain number of copies of the pamphlet of which a passage was read at the foregoing meeting. This work is at the disposal of the members of the subcommission who will certainly wish to express thanks to Mr. FAUCHILLE for this gracious attention.

The PRESIDENT adds that before taking up the discussion of the various articles whose text is proposed by the drafting committee in a report which has been distributed, he thinks that it is proper to thank this committee for the complete and lucid exposé which it has submitted to the deliberations of the assembly.

Mr. ASSER says that he is happy to address specially to Mr. RENAULT, who drew up the exposé accompanying these propositions, warm congratulations, in which Admiral FISHER has asked particularly to join. (*Applause.*)

The PRESIDENT thinks it is not necessary to read the text itself of the report of the drafting committee which the subcommission has before its eyes. It will be well simply to follow the same method of discussion which has been adopted hitherto and to provoke first of all an exchange of general observations on each of the three groups of subjects contemplated in the report, each article to be thereupon examined separately.

[58] Mr. Motono expresses the desire to obtain elucidations on a question connected with the first group. Article 2 provides that: "hospital ships equipped wholly or in part at the expense of private individuals or relief societies, etc."

It seems to him that these vessels ought not to be allowed to carry relief in time of war unless they belong to the Red Cross societies. In Japan particularly private vessels are not recognized as having a right to perform a relief-affording mission unless they are duly connected with one of these societies.

It might be well for the drafting committee to express itself on this point.

Mr. Renault answers that the drafting committee intentionally made a distinction between independent vessels and those fitted out by the Red Cross. If the owner of a pleasure yacht wishes to devote this vessel to hospital service, there is no reason why the vessel in question, provided it is commissioned, should not enjoy the advantages granted to hospital ships.

The Government to which the yacht belongs may refuse or accept its assistance. This is a matter of internal order and of adapting the hospital service to the tastes and rules of each country.

Mr. **Motono** expresses his thanks and declares himself satisfied with this explanation.

The **President** thinks he ought to observe that in the exposé of grounds which accompanies the new wording of Article 3, the drafting committee expressed the idea that, in the case of vessels having an official commission, the fact of being incorporated in the navy of one of the belligerents might constitute a violation of neutrality.

Mr. **ASSER** is of opinion that if this incorporation is the result of a conventional agreement formally accepted by the parties, it would not constitute a violation of neutrality.

However, the other arguments presented by the committee in support of the wording of Article 3 without doubt suffice to cause it to be adopted.

The **PRESIDENT** proposes to open the discussion on each of said articles proposed by the drafting committee, and he reads Article 1, as follows:

#### ARTICLE 1

Military hospital ships, that is to say, ships constructed or assigned by States specially and solely with a view to assist the wounded, sick and shipwrecked, the names of which have been communicated, before they are employed, to the belligerent Powers, shall be respected and cannot be captured while hostilities last.

These ships, moreover, are not on the same footing as men-of-war as regards their stay in a neutral port.

Mr. **Tadema** asks whether it would be necessary to give notice to the neutral States of the military hospital ships of the belligerents, either by means of a direct communication or by official publication.

Mr. **Renault** says that he would accept the idea of notification by means of publication in the official gazette of the belligerents.

It is evident that it is to the interest of the neutrals to know of the existence of the military hospital ships, but the question becomes important to them only when the vessel enters a neutral port. Upon entering this port, it may notify its presence and the neutral State will thus be warned of the fact. The final report prepared regarding the labors of the subcommission may, however, satisfy the observation of Mr. **TADEMA** by stating that it is to be desired that the official communication of the military hospital ships of the belligerents be made to the neutral States.

Mr. **Siegel** observes that military and other hospital ships appearing in a neutral port under their own national flag, the flag of the Red Cross, and the special commission of the nation to which they belong, will have no trouble in proving that they are hospital ships; he therefore sees no practical utility in creating a special provision for this case, but he has no objection to the proposition of Mr. **RENAULT**.

The **President** takes note of the observation of Mr. **TADEMA** and says that it will be taken into account in the report of the subcommission.

Mr. **Asser** wishes to know whether it may be considered sufficient to communicate only the names of the military hospital ships, or whether any other statement should be added.

Admiral **Pépau** answers that it will be sufficient to communicate the name with the nationality of the ships.

Mr. **Asser** says that Articles 1, 2, and 3 provide that the notification shall be made "*before they are employed.*"

[59] This wording might be interpreted as meaning that it would declare as being sufficient a notification made long before the opening of hostilities, for instance on the occasion of a previous war. This is not the intention of the drafters. He therefore proposes to substitute, in the first three articles, the words "*at the commencement or during the course of hostilities, and in any case before they are employed*" instead of "*before they are employed.*"

Mr. **Renault** says that he has no personal objection to this proposition, which can, he thinks, be adopted.

Admiral **Pépau** asks that the question be clearly defined as to the treatment to be granted to military hospital ships in regard to their stay in a neutral port.

Mr. **Renault** says that, although military hospital ships are Government ships and enjoy extraterritoriality, they should nevertheless be treated differently from war vessels with respect to their stay in port, the resupplying, etc. The report may give, if desired, an additional explanation on this point, although it already contains explanations which may satisfy the doubts raised.

The **President** now reads Article 2, worded thus:

#### ARTICLE 2

Hospital ships, equipped wholly or in part at the expense of private individuals or officially recognized relief societies, shall likewise be respected and exempt from capture if the belligerent Power to which they belong has given them an official commission and has notified their names to the hostile Power before they are employed.

These ships shall be provided with a certificate from the competent maritime authorities declaring that they have been under their control while fitting out and on final departure.

Mr. **Motono** says that the document required by this article may be issued by the military authority as well as by the maritime authority. He therefore thinks that it would be well to use the words "*competent authorities.*"

This proposition is adopted.

The **President** reads Article 3, as follows:

#### ARTICLE 3

Hospital ships equipped wholly or in part at the expense of private individuals or officially recognized relief societies of neutral countries, shall be respected and exempt from capture if the neutral Power to which they belong has given them an official commission and has notified their names to the belligerent Powers before they are employed.

The text of this article is adopted without any observations.

The **PRESIDENT** now reads Article 4, as follows:

#### ARTICLE 4

The ships mentioned in Articles 1, 2, and 3 shall afford relief and assistance to the wounded, sick and shipwrecked of the belligerents without distinction of nationality.

The Governments undertake not to use these ships for any military purpose.

These ships must in no wise hamper the movements of the combatants.

During and after an engagement they will act at their own risk and peril.

The belligerents will have the right to control and search them; they can refuse to

help them, order them off, make them take a certain course, and put a commissioner on board; they can even detain them if important circumstances require it.

As far as possible, the belligerents shall enter in the log of the hospital ships the orders which they give them.

Admiral **Péphau** asks that, in paragraph 6 of this article, the words "*livre de bord*" (ship's journal) be superseded by "*journal de bord*" (logbook) which appears more precise to him.

This amendment is adopted.

The **President** now reads Article 5, worded as follows:

#### ARTICLE 5

Military hospital ships shall be distinguished by being painted white outside with a horizontal band of green about a meter and a half in breadth.

Other ships shall be distinguished by being painted white outside with a horizontal band of red a meter and a half in breadth.

The boats of the ships above mentioned, as also small craft which may be used for hospital work, shall be distinguished by similar painting.

[60] All hospital ships shall make themselves known by hoisting, with their national flag, the white flag with a red cross provided by the Geneva Convention.

The **PRESIDENT** recalls the fact that at a previous meeting the subcommission admitted that as regards Ottoman relief vessels the Red Crescent should be assimilated as an emblem to the Red Cross.

Mr. **Renault** says that in his opinion it is not for the subcommission to decide on this point.

**Noury Bey** declares that Ottoman war vessels have always respected the emblem of the Red Cross as the mark of the Geneva Convention. He expressed the desire that, by way of reciprocity, the Red Crescent may be insured the same respect and he asks that note be taken of the expression of this desire.

Mr. **Rolin** says that he has a declaration to make, which also relates to the last paragraph of Article 5.

He states that the Siamese Government adds to the flag of the Geneva Convention, besides the Red Cross, a sacred emblem of the Buddhist religion, also figured in red and called "*the flame*." The effect of adding this emblem is to still further enhance the sacred character of the flag prescribed by the Geneva Convention.

The Siamese Government considers, moreover, that Article 7 of the Geneva Convention, which prescribed the red cross on a white background, does not oppose this addition and the intention of this Government will no doubt be to apply in this manner the final paragraph of Article 5 as proposed.

Mr. **ROLIN** confines himself to asking that note be taken of his declaration.

The **President** says that the declarations of the delegates from Turkey and Siam will be entered in the minutes.

Mr. **Mahan** observes that the emblem of the Red Cross is religious in character, appealing particularly to Christian nations, and he thinks that there would be advantage in adopting another which would be recognized by all.

The **President** answers that he can take note of the expression of this desire on the part of Mr. **MAHAN**, but that the subcommission is not competent to consider a proposition which would tend to revise a clause of the Geneva Convention.



Mr. **Motono** asks that in paragraph 2 of Article 5 the words "*other ships*" be superseded by the more precise ones "*the ships mentioned in Articles 2 and 3.*"

Mr. **Renault** says that as far as he is concerned he has no objection to this modification.

Mr. **Motono** asks whether, in compelling the vessels referred to in paragraph 3 of Article 5 to wear a special coat of paint before being put to any use, it is intended to specify that they must not *in any case* or *at any time* be devoted to any other use.

Mr. **Renault** answers that such is in reality the idea which it was intended to express.

Article 5 is adopted under reservation of the several observations indicated above.

The **President** reads Article 6, as follows:

#### ARTICLE 6

Neutral merchantmen, yachts, or vessels having on board sick, wounded, or shipwrecked of the belligerents cannot be captured for so doing, but they are liable to capture for any violation of neutrality which they have committed.

Mr. **Renault** proposes to supersede the words "*they have committed*" at the end of this article by the words "*they may have committed,*" these latter words not implying the idea that the vessels in question have necessarily engaged in acts of violation of neutrality.

This modification is adopted.

Mr. **Mahan** says that none of the articles provide for the case of combatants shipwrecked as a result of a naval battle and who, under these circumstances, are taken in by a neutral vessel other than a hospital ship. Mr. **MAHAN** proposes that a special rule be inserted on this subject and he reserves the right to frame it for the drafting committee.

Mr. **Scheine** observes that as the proposition of Mr. **MAHAN** has not been made the subject of any general exchange of views in the subcommission, the drafting committee might experience some trouble in finding a form of wording which would answer the general sentiment.

The **President** proposes to continue before anything else the examination of the articles proposed, and he reads Article 7, thus worded:

#### ARTICLE 7

[61] The religious, medical, and hospital staff of any captured vessel is inviolable and its members cannot be made prisoners of war. On leaving the ship they take with them the objects and instruments which are their own private property.

The staff shall continue to discharge its duties while necessary, and can afterwards leave when the commander in chief considers it possible.

The belligerents must guarantee to the said staff when it has fallen into their hands the enjoyment of their salaries intact.

Mr. **Motono** asks whether the pay referred to in this article and attributed to the religious, medical, and hospital personnel is the pay allowed by the State to which the personnel belongs. He thinks that it might be stated that it is a question here of the *pay allowed in the army and navy of the captor Government.*

Mr. **Renault** sees objections to adopting this form of wording, which would

in some cases render the interested personnel liable not to receive any pay at all. As for the wording proposed by the committee, it does no more than reproduce the text of 1868.

As no member seconds the motion of Mr. MOTONO, the President now reads Article 8, as follows:

#### ARTICLE 8

Sailors and soldiers on board when sick or wounded, to whatever nation they belong, shall be protected and tended by the captors.

Mr. Motono recalls the fact that at a previous meeting he set forth the views of his Government in regard to the special case of the transportation by sea of the sick and wounded of land armies. He thanks the drafting committee for the precision with which it transcribed these ideas, and he requests the insertion in the minutes of this meeting of the passage of the report relative to this question and worded as follows:

In the provisions which the committee submits to the subcommission mention is made of sick, wounded, and shipwrecked persons, and not of the victims of maritime war. This latter expression, while correct in most cases, would not always be so and ought therefore to be discarded. The rules provided are applicable whenever there are sick and wounded on board of seagoing vessels, without the necessity of inquiring whether the wound has been inflicted or the disease contracted on land or sea. Consequently, if a vessel is devoted to the transportation by sea of the sick and wounded of a land army, this vessel and these sick and wounded will be governed by the provisions of our draft. Inversely, it is very evident that if sick or wounded seamen are landed and placed in an ambulance or hospital, the Geneva Convention will be fully applicable in their regard.

This remark appears to us sufficient to satisfy the observations made in the subcommission, and we by no means deem it necessary to insert a special provision in this regard.

The President says that due account will be taken of the request of Mr. MOTONO, and declares Article 8 adopted.

He now reads Article 9, worded thus:

#### ARTICLE 9

The shipwrecked, wounded or sick of one of the belligerents who fall into the power of the other are prisoners of war. The victor must decide, according to circumstances, whether to keep them, send them to a port of his own country, a neutral port, or even to an enemy port. In this last case prisoners thus repatriated cannot serve again while the war lasts.

Mr. ASSER asks that the word "*victor*" be omitted. The word "*captor*" might perhaps be substituted in its stead.

Mr. Renault explains that the reason why the committee adopted this word was because it could not find any more satisfactory one.

In his opinion the *victor* is the belligerent who happens, through the circumstances of the war, to have the right and authority of the stronger with respect to the hospital ship which he meets.

He cannot be called the *captor*, since he has not the power to capture.

The President suggests the following wording: "Prisoners of war are

the shipwrecked, wounded or sick of one of the belligerents who fall into the power of the other. The latter must decide, etc."

This amendment is adopted.

[62] Mr. **Motono** asks whether, in stating that "prisoners thus repatriated cannot *serve* again while the war lasts," it was meant to refer only to war service and not such as might be performed by these prisoners in offices, ambulances, etc.

Mr. **Renault** says that the traditional expression was used, which, in his opinion, refers solely to service as a combatant.

Mr. **Motono** observes that other kinds of services should nevertheless be provided for, and he asks that note be taken of his question.

Mr. **Rolin** supports the view of Mr. **Motono** and recalls the fact that Article 6, paragraph 3, of the Geneva Convention of 1864 contains the wording *take up arms again*, which appears to him more precise than the word *serve*, as adopted by the drafting committee. He adds that, moreover, the third sentence of Article 9 proposed does not seem to be of any practical utility, and asks that it be simply omitted.

Mr. **Motono** indorses this proposition and, in case it is not adopted, he asks subsidiarily that the subcommission substitute the words *take up arms again*, as adopted in 1864, instead of *serve*.

After an exchange of views among Messrs, **Rolin**, **Renault**, and **Mahan** as to what advantages or disadvantages the omission of the last sentence of Article 9 might have from the humane and practical standpoint of the treatment of the sick and wounded who are prisoners of war, the **President** submits the proposition of Mr. **Rolin** to a vote by roll-call.

*Voting for omission:* Belgium, China, Japan, and Siam.

*Voting against:* Germany, the United States of America, Austria-Hungary, Denmark, Spain, France, Great Britain, Italy, the Netherlands, Portugal, Roumania, Russia, Serbia, Sweden and Norway, and Turkey.

*Not voting:* Switzerland.

The **President** says that by a vote of 15 for and 4 against, with one abstention, the subcommission has decided to maintain the last sentence of Article 9.

He puts to a vote the subsidiary proposition of Mr. **Motono** relative to the substitution of the words *take up arms again* in lieu of the word *serve*.

Before the vote is taken, Mr. **Siegel** declares that he is in favor of preserving the present wording.

*Voting for maintenance of present wording:* Germany, Austria-Hungary, China, Denmark, Spain, Great Britain, Italy, Netherlands, Portugal, Russia, Sweden and Norway.

*Voting against:* The United States of America, Belgium, France, Japan, Roumania, Serbia, Siam, and Turkey.

*Not voting:* Switzerland.

The **President** states that the subcommission has thus decided by a vote of 11 for and 8 against, with one abstention, not to adopt the proposition formulated by Mr. **Motono**, which, however, he hopes will be taken into account at the time of the revision of the Geneva Convention.

Mr. **Mahan** calls the attention of the subcommission to the case in which the prisoners referred to in Article 9 have been exchanged.

Mr. **Asser** says that it would be well if account were taken of this contingency in the report.

The **PRESIDENT** declares Article 9 to be adopted under reservation of the amendment voted on, and he reads Article 10, worded thus:

ARTICLE 10

The shipwrecked, wounded, or sick who are landed at a neutral port, with the consent of the local authorities, must be guarded there by the latter, so as to prevent their again taking part in the operations of the war.

The expenses of tending them in hospital and interning them shall be borne by the State to which the shipwrecked, wounded, or sick belong.

**Count de Grelle Rogier** observes that the text of this article is in contradiction with the provision which was adopted by the second subcommission at the initiative of his Excellency **Mr. BEERNAERT** and **General MOUNIER**.

The provision referred to is found in Article 55 of the Brussels Declaration, worded as follows:

ARTICLE 55

A neutral State may authorize the passage over its territory of the wounded or sick belonging to the belligerent armies, on condition that the trains bringing them shall carry neither personnel nor material of war. In such a case, the neutral State is bound to take whatever measures of safety and control are necessary for this purpose.

Once they are admitted to the neutral territory, the sick or wounded shall not be returned to any but their country of origin.

[63] **COUNT DE GRELLE ROGIER** thinks that this provision, in connection with Article 10 as proposed, would stipulate a difference of treatment for the sick and wounded which could not be justified. As a matter of fact, by virtue of the first text these sick and wounded might be set free, while according to the other they might be held as prisoners of war.

He considers it too severe, moreover, to compel a neutral State to receive, afford hospital care to, and intern the sick and wounded whom it might suit a belligerent to dump on its territory. He therefore proposes that Article 10 be modified as follows:

Shipwrecked, wounded, or sick persons landed in a neutral port with the consent of the local authority may be returned only to their country of origin. The expenses of hospital care shall be borne by the State to which the sick, wounded, or shipwrecked persons belong.

**Mr. Renault** says that the drafting committee framed Article 10 in a distinct manner and without seeking to establish a comparison with the provisions adopted by the second subcommission. The difference of treatment pointed out by **Mr. DE GRELLE ROGIER** is evident, but it may depend on a difference of situation. There are cases when it ought to be possible to permit the landing of sick and wounded, and those cases are generally more urgent in naval than in land warfare. Moreover, it must not be forgotten that the subcommission has to contemplate a case with which the Brussels Act did not have to concern itself, viz., that of the shipwrecked. If they are not sick or wounded and are landed in a neutral port, the latter ought to be obliged to keep them. To sum up, Article 55 could not be applied to all the possible cases of maritime war.

**Mr. Rolin** thinks that, independently of the cases already provided for in

Article 10, it is necessary to contemplate that of the mere passage of sick and wounded over neutral territory, and he defines the rights and obligations of neutrals in this case. It may be admitted that a neutral State may permit its territory to be used in order to bring sick and wounded soldiers back to their own country but it would be violating the duties of its neutrality if it permitted them to be led across the neutral territory into a country where they would become prisoners of war. Mr. ROLIN consequently proposes, in order to maintain harmony between Article 55 of the Regulations on land warfare and the present Article 10, that a paragraph be added to said article as follows:

Once they are admitted to neutral territory, the shipwrecked, sick and wounded persons shall not be returned to any but their country of origin.

Mr. ROLIN thinks that by the adoption of this additional provision due account would be taken at the same time of the observation of Mr. DE GRELLE ROGIER.

The **President** suggests that these various propositions be referred for study to the drafting committee, which will endeavor to harmonize as far as possible Article 10 with Articles 53 and 55 of the Brussels Act. He says that at the next meeting, set for Thursday morning, the drafting committee will bring the final texts, which, if adopted, will enable the work of the subcommission to be embodied in a draft convention which will be absolutely complete and ready to be put into practice if circumstances require.

The meeting adjourns.

## FIFTH MEETING

JUNE 15, 1899

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Mr. Asser presiding.

The minutes of the fourth meeting are read and adopted.

The **President** states that he has received from its author a recent publication which Mr. FERGUSON, former minister resident of the Netherlands in China, has just published on the subjects which have occupied the Conference and in particular those relating to the adaptation of the principles of the Geneva Convention to maritime war.

[64] Mr. ASSER commends this work to the attention of the subcommission and he places the copy in his possession at its disposal.

The **PRESIDENT** calls attention to the fact that at the previous meeting the subcommission adopted the final text of Articles 1 to 9, and that the subject-matter of Article 10 remains to be passed upon.

He thinks that it will be well, before opening up the discussion on this article, to ask the reporter to make known the modifications in wording which he made after the last meeting both in his report and in the text of the proposed articles.

Mr. **Renault** says that as far as the text of the articles is concerned, it has been amended in accordance with the decisions reached by the subcommission. He will not recall these amendments, which are known, but he will indicate only two modifications, the initiative in making which was taken by the drafting committee:

1. In Article 10 the words "*must be guarded*" will be substituted in place of "*must be guarded there.*"

2. In Article 6 the words "*or taking on board*" (sick, wounded, etc.) will be added to the words "merchantmen, etc., etc., having"

As far as the report itself is concerned, Mr. **RENAULT** says that in order to take into account the wish expressed by Mr. **TADEMA** the committee decided to insert in the middle of page 3 the following clause:

The notification of the names of military hospital ships concerns first of all the belligerents; it may also concern neutrals, for, as will be explained, these vessels acquire a peculiar status in neutral ports.

It is therefore to be desired that the belligerents make the names of these vessels known to the neutral States, even though it were only by means of an insertion in their official gazette.

In order to satisfy certain doubts which had been expressed in regard to the status of military hospital ships in neutral ports, the following clause was inserted in the report (page 4):

Apart from the considerations just expressed, military hospital ships shall naturally be treated as war vessels, notably as regards the benefits of extraterritoriality.

In order to satisfy the anxiety expressed by Mr. MAHAN in regard to Article 9, and in case the prisoners contemplated should have been exchanged, the report will contain the following clause at the end of page 9:

The sick or wounded who are thus returned to their country shall not be allowed to serve again during the war.

Of course if they should be exchanged, their status as "prisoners of war at liberty on parole" shall cease and they will recover their freedom of action.

The **President** says that the work of the drafting committee may therefore be considered as being complete.

Mr. **Mahan** recalls the fact that at the previous meeting he called the attention of the subcommission to the case of a neutral ship other than a hospital ship, which had accidentally gathered up shipwrecked combatants. He would have liked to see a special rule inserted in the convention with a view to this case.

He did not succeed in bringing the drafting committee around to this view.

In a spirit of conciliation, he does not think that he will have to insist on his proposition, and he is ready to advise his Government to accept the text of the articles which have been proposed. He nevertheless persists in thinking that it would have been well to fill the void which he pointed out.

The **President** and Mr. **Renault** remind Mr. MAHAN that Article 6 has been supplemented by a clause the very purpose of which was to meet his observation.

Mr. **Mahan** answers that it seems to him that the change introduced related to the status of neutral ships but not to that of the shipwrecked persons gathered up. However, he declares again that he does not insist on his proposition.

Mr. **Motono** makes the following declaration in connection with Article 9:

The provisions of the last paragraph of Article 6 of the Geneva Convention of 1864 and those of Article 9 of the draft under discussion are contradictory.

In the former, the sick and wounded are covered by neutrality, whereas in the latter they are treated as prisoners of war.

Considering the provisions of Article 9 of the present draft more in accordance with the laws of war, we wished to modify the provisions of Article 6 of the Convention of 1864 along the lines of Article 9, for the purpose of bringing into harmony the provisions of the aforementioned articles.

[65] We must add further that in case the two aforementioned provisions should remain unmodified, insular Powers like Japan would be in a manifestly disadvantageous situation with respect to the continental Powers.

Consequently, if our subcommission is competent to modify Article 6 of the Geneva Convention of 1864, we propose to submit to its examination an amendment along the lines indicated.

In case our subcommission should declare itself incompetent, we reserve the right to propose this amendment upon the first favorable opportunity.

We have the honor to request the **PRESIDENT** to mention the present declaration in the minutes.

The **President** says that this will be done.

He proposes to go on to Article 10, and reads it:

ARTICLE 10

The shipwrecked, wounded, or sick who are landed at a neutral port with the consent of the local authorities, must be guarded by the latter so as to prevent their again taking part in the operations of the war.

The expenses of hospital care and internment shall be borne by the State to which the sick, wounded, and shipwrecked persons belong.

The **PRESIDENT** recalls the fact that the wording of this article was the subject of propositions and amendments presented by Count **DE GRELLE ROGIER** and Mr. **ROLIN**.

He asks the reporter to state the views of the drafting committee on this subject.

Mr. **Renault** says that the committee examined at length and conscientiously Article 10 which was referred to it together with the aforementioned amendments, and that as a result of this examination it was led to unanimously maintain the text which it had proposed before.

It seemed to it that the subcommission had no business to combine Article 10 with Articles 53 and 55 of the Brussels Declaration.

As a matter of fact these texts provide for two different situations which should in consequence be examined and regulated separately. The rules of continental war cannot be applied by way of assimilation to maritime war, and there are particularly other things to be considered in regulating the conditions of access to a neutral port than to neutral territory.

The committee deemed it necessary, with a view to rendering the part played by the neutral as clear as possible and to preventing international difficulties, to compel him to keep the wounded, sick, and shipwrecked persons landed in one of his ports. It will be permissible for him not to admit them, but once he has admitted them it will be necessary for him to keep guard over them.

As to the burdens falling on the neutral State on this account, they will not be so great as supposed, and the evacuation of wounded after a naval combat can never be compared with the affluence of wounded which a land battle might bring about on the neutral territory situated near the operations of the war.

At all events the neutral, if he consents to receive in his port a vessel laden with wounded, will be indemnified by the State to which these wounded belong for all the expenses caused by their hospital care and internment.

Count **de Grelle Rogier** does not very well understand the necessity for the drafting committee's insisting on the maintenance of Article 10 intact.

He has already pointed out the discrepancy existing between Article 55 of the Brussels Act and this Article 10. Article 9 provided much more advantageous rules. What the drafting committee desires is that the wounded, sick and shipwrecked shall be declared incapable of serving. This is not a reason for keeping them indefinitely on the neutral territory.

Count **DE GRELLE ROGIER** consequently proposes that Article 10 be given the following form:

The shipwrecked, wounded, or sick who are landed at a neutral port with the consent of the local authorities shall not be sent back to any but their country of origin and they shall in this case be declared incapable of serving again during the continuance of the operations of the war.



The expenses of tending them in hospital shall be borne by the State to which they belong.

Mr. **Renault** remarks that Articles 9 and 10 should not be compared. In Article 9 it is the belligerent that sends the sick and wounded back to their original country on condition that they shall not serve again during the war. As to the case contemplated in Article 10, it has not been admitted, as in 1868, [66] that in granting the power to leave the sick and wounded at liberty on parole the provision contained a sufficient guaranty.

The drafting committee insists on the maintenance of the text which it proposed.

Baron **Bildt** seconds the motion of Count DE GRELLE ROGIER on the score of other considerations. It would be imposing too onerous a duty on neutrals to compel them to keep the shipwrecked, wounded, and sick throughout the duration of the war. It would be necessary to find sufficient guaranties in order to demand this sacrifice of neutral Powers.

Mr. **Renault** having observed that this is nevertheless what happens in a continental war when a beaten army corps enters neutral territory and is interned there, Count de Grelle Rogier answers that it is then a question of combatants.

The **President** observes again, in reply to Baron BILDT, that the landing in the neutral port always depends on the consent of the local authority.

Mr. **Odier** suggests that, in order to satisfy Count DE GRELLE ROGIER, they say that the *sick, wounded, and shipwrecked who are recognized as being incapable of serving may, after being cured, be sent back to their country.*

Mr. **Motono** supports the wording of Mr. ODIER.

Captain **Siegel** would like to be enlightened as to how it will be possible to recognize that the *cure* of the sick and wounded is effected and to distinguish between those who may be returned and those who ought to be kept; he declares himself in favor of maintaining the text proposed.

Mr. **Corragioni d'Orelli** is of opinion that the requirement of Article 10 is excessive. It is necessary to anticipate the case of an epidemic in the port or city of internment, and allow the neutral State, for sanitary reasons, the privilege of sending the shipwrecked, wounded and sick back to their original country.

Mr. **Scheine** insists on the difficulty of distinguishing between the sick who are capable of serving and the others. It is not service as a combatant alone that can be provided for. Wholeness of limbs is not necessary, for instance, for the service of semaphores, the adjustment of torpedoes, etc.

The **President** adds that it might be possible to call in the local authorities of the country where the sick and wounded are interned, by adding the words "recognized incapable of serving by the neutral medical authorities."

Mr. **Odier** states that this system is already put into practice by the Geneva Convention, and he reads Article 6 of that Convention.

Mr. **Scheine** observes that this article contemplates land warfare, the conditions of which are very different from those of naval warfare.

Admiral **Fisher** is in favor of maintaining integrally the text of Article 10 as adopted by the drafting committee.

Baron **Bildt** thinks the proposition of Mr. DE GRELLE ROGIER all the more acceptable because this wording proposes for Article 10 a condition which has been accepted for Article 9.

Mr. **Scheine** is not of this opinion. According to one of the articles, the prisoners are returned at the will of the belligerents; according to the other they are placed in the hands of the neutral, who is less competent to decide as to their fate than the belligerent.

After an exchange of views as to the position of the question, the **President** puts to a vote the maintenance of Article 10 intact.

Ten States vote in favor of such maintenance, viz.: Germany, Austria-Hungary, France, Great Britain, Italy, Netherlands, Portugal, Roumania, Russia, and Turkey.

The following voted against it: The United States of America, Belgium, China, Denmark, Spain, Japan, Siam, Sweden and Norway, and Switzerland.

The **President** states that the assembly adopts the whole wording as proposed by the committee for Article 10.

The **PRESIDENT** congratulates the subcommission on the results of its labors, which may be considered as very satisfactory.

He says that it is now necessary to consider the procedure according to which this work shall be submitted to the Conference.

Should the usual course be followed, that is, to present a report to the second plenary Commission, which will have to ratify by a vote the decisions of the subcommission; or will it be suitable, in order to gain time, to avoid this formality and take the result of the labors of the subcommission directly before the plenary session of the Conference?

The **PRESIDENT** thinks that this latter suggestion will receive all the votes and he asks the subcommission to give him formal instructions to ask the [67] President of the Conference and the President of the Second Commission for permission to present to the Conference the report of the subcommission and the text of the articles adopted.

Mr. **ASSER** adds that in his opinion the vote of ratification which is to be given by the Conference ought to be less platonic in character than a mere *vœu*; it would be desirable, if possible, to cause the work of the subcommission to enter without waiting into the body of positive international law by embodying it in a convention. This convention might be signed right at The Hague, by the plenipotentiaries of the Powers represented and under the same conditions as to form, in regard to ratification and going into force, as those observed at the time of the conclusion in this city, on November 14, 1896, of the Convention on private international law.

The **Reporter** of the drafting committee, who shares this view, has already prepared the preamble which is eventually to precede the convention and which might be drawn up in the following terms:

His Majesty the Emperor of Germany, etc., etc.,  
being alike animated by the desire of mitigating, as far as within their power, the incomparable evils of war by adapting for this purpose to maritime war the principles of the Geneva Convention of August 22, 1864, have resolved to conclude a convention for this purpose: etc., etc.,

Mr. **Motono** proposes to supersede in this preamble the words "*adapting to maritime war*" by "*supplement the principles of the Geneva Convention,*" which appear to him broader and more general in application.

Baron **Bildt** asks whether any thought has been given to the wording of

the final paragraph of the convention to be concluded, especially as regards the accession clause, the length of time permitted for ratification, etc.

Mr. **Renault** says that as regards the preamble, he does not deem it well to adopt the form suggested by Mr. **MOTONO**, which might perhaps lend itself to too broad a construction.

As regards the observation of Baron **BILDT**, he proposes to intrust to the drafting committee the task of preparing, in conjunction with the **PRESIDENT**, a complete diplomatic text and he asks Baron **BILDT** to kindly lend them his assistance.

Baron **Bildt** says that he will willingly place himself at the disposal of the drafting committee.

Upon an observation by Admiral **FISHER**, the **President** remarks that the report of the drafting committee will have an interpretative force with respect to the convention similar to that attributed to an explanatory statement in the case of a proposed law.

Mr. **Corragioni d'Orelli** calls attention to the desirability of having the Governments of very remote countries enabled to examine and accept the convention with a full knowledge of what they are doing, and he asks whether it would not be well to take this necessity into account, either by leaving the signature protocol open or by some other means.

**Noury Bey** suggests that the instrument be permitted to be signed "*ad referendum*," which would leave to the interested Governments full latitude to accept or refuse the convention.

Baron **Bildt**, seconded by Mr. **CORRAGIONI D'ORELLI**, points out the practical objections to the signature of an act "*ad referendum*." He is of opinion that the convention ought only to be signed by the plenipotentiaries who are authorized to sign it without reservations. The other States will have a right to adhere thereto subsequently, and all must pledge themselves to ratify it within the shortest possible time. This latter condition appears to Baron **BILDT** indispensable in order to avoid difficulties and delays in the ratification.

The **President** recalls the fact that at the beginning of the labors of the Second Commission a debate arose as to whether it was competent to revise the Geneva Convention.

The Commission answered in the negative. It would nevertheless be desirable to express the desire that the Geneva Convention might be revised at an early date.

The **PRESIDENT** reads the text of a *vœu* which he proposes to submit to the Conference on this subject:

The Hague Conference, taking into consideration the preliminary steps taken by the Swiss Federal Government for the revision of the Geneva Convention, utters the *vœu* that steps may be shortly taken for the assembly of a special conference having for its object the revision of that Convention.

[68] Mr. **Scheine** asks that it be understood that this revision shall be made without affecting the work now accomplished.

The **President** is of opinion that it would be very useful to incorporate this work in the new convention and to combine in a single code the whole set of provisions adopted on the subject.

However, in case (which God forbid!) a maritime war should break out before the revision of the Geneva Convention, it would be very desirable to

have a special treaty signed without waiting until such revision had taken place.

Mr. **Renault** insists, for the sake of the work accomplished at The Hague, that its special and distinct character be preserved.

Care should, according to him, be taken not to connect it at present with the revision of the Geneva Convention, for by so doing the risk would be run of indefinitely postponing the putting into practice of the resolutions just adopted.

Mr. **Odier** is of opinion that the subcommission is perfectly competent to express the *vanu* proposed by the PRESIDENT, without it being necessary to connect the two questions, that is, the convention which will contain the work of this subcommission and the *vanu* to be expressed in regard to the revision of the Geneva Convention.

General **Thaulow** joins in the views expressed by Mr. **ODIER**. The subcommission is competent to propose the revision within the shortest possible time.

The **President**, resuming the discussion, states that he has received instructions from the subcommission to insist on having the text of the articles voted for by the subcommission embodied into positive law and to try to have a convention signed to this effect.

Following this exchange of observations, the PRESIDENT states that the subcommission will disperse after terminating its labors. The results which it has accomplished constitute an important reform in the interest of humanity. Ever since 1868 the wish has been repeatedly expressed that the additional provisions of the Geneva Convention might be adapted to maritime war. Thanks to the good-will and the spirit of conciliation shown by all in this subcommission, this wish will soon be realized, and we ought to congratulate ourselves on having succeeded in establishing an understanding on matters of so high a humane interest.

Mr. **ASSER** adds that he deems it a duty and a pleasure to express thanks to the secretaries of the subcommission, who have shown remarkable zeal and devotion in their often difficult task. (*Applause.*)

Admiral **Fisher** says that the subcommission no doubt wishes to offer an expression of its gratitude to its eminent PRESIDENT, who has guided its labors in his highly competent manner and in a benevolent and impartial spirit to which the assembly is happy to do homage. (*Applause.*)

Admiral **FISHER** adds that he fully joins in the thanks which the PRESIDENT chose to express to the secretaries on behalf of the subcommission.

The **President** says that he is deeply touched by the sentiments just expressed in his regard.

His task has been rendered easy and pleasant by the benevolence of all his colleagues, and he is glad to avail himself of this opportunity to thank them sincerely.

He declares the meeting adjourned.

## SECOND SUBCOMMISSION

## FIRST MEETING

MAY 25, 1899

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Mr. **Martens** presiding.

The **President** states that it appears useful and desirable to him, in the interest of the labors of the subcommission, not to commence the examination of the draft Declaration of Brussels of 1874 concerning the laws and customs of war at Article 1 but first to take into consideration the provisions containing the most generally recognized principles. Accordingly he proposes that the articles relating to prisoners of war be first studied.

Following observations by General **Mounier** and his Excellency Mr. **Eyschen**, who point out the utility of knowing in advance the order in which the various articles are to be discussed, the subcommission decides, in accordance with the propositions of Mr. **MARTENS**, to distribute the work in the following manner and to examine the provisions of the said draft in the order indicated below :

1. *Prisoners of war* (Articles 23 to 34).
2. *Capitulations* (Article 46) and *Armistices* (Articles 47 to 52).
3. *Parlementaires* (Articles 43 and 44).
4. *Military authority with respect to private parties and Contributions and requisitions* (Articles 36 to 42).
5. *The sick and wounded* (Articles 35 and 56), the examination of which provisions, as observed by Messrs. **Rolin** and Chevalier **Descamps**, can be made more usefully when the results of the deliberations of the first subcommission are known as far as they relate to this subject.
6. *Spies* (Articles 19 to 22).
7. *Means of injuring the enemy* (Articles 12 to 14) and *Sieges and bombardments* (Articles 15 to 18).
8. *On the internment of belligerents and the care of the wounded in neutral countries* (Articles 53 to 55).
9. *On military authority over the territory of a hostile State* (Articles 1 to 8).
10. *Who should be recognized as a belligerent party; combatants and non-combatants* (Articles 9 to 11).

Messrs. General **MOUNIER**, **LAMMASCH** and several other members desiring a delay in order to prepare themselves more fully for the discussion, the meeting adjourns.

## SECOND MEETING

MAY 27, 1899

Mr. Martens presiding.

The minutes of the first meeting are adopted.

The **President** announces that Mr. ROLIN has kindly accepted the duties of reporter of the subcommission.

Before discussing the articles on the program, Mr. MARTENS deems it necessary to make a declaration.

In 1874 the Russian Government submitted a draft to the Conference of Brussels. The views of the Imperial Government remain the same. It is not a question, in its opinion, of establishing an international scientific code, but of reaching an understanding as to a common basis for all the instructions which the Governments are to give to their armies and which shall be binding in time of war. In this way there will be evolved a universal or at least a European law of war. Each Government will have to assume only one pledge, viz., that it will give its armies identical instructions on this basis.

His Excellency Mr. **Beernaert** observes that this would be an indirect way of establishing an international convention.

The **President** remarks that it will be sufficient to have a single article inserted at the beginning of the declaration in order to show the pledge assumed as indicated above, that is, a pledge to give uniform instructions to their armies on an *identical basis*. This basis will consist of the Brussels Declaration, revised and modified after a free and detailed discussion in the present Conference. The form of the aforementioned pledge might be determined later on.

The order of the day is an examination of the chapter: "Prisoners of war."

The **PRESIDENT**, before opening the discussion, says that all the articles will of course be given a second reading.

His Excellency Mr. **Beernaert** calls attention to a pamphlet which will be distributed among the members and which bears the title "Draft of international regulations regarding prisoners of war." He thinks that certain ideas contained in this pamphlet may be utilized in the discussion and he will present, on behalf of the Belgian delegation, some amendments based on these ideas.

Article 23 of the Brussels draft is now read:

Prisoners of war are lawful and disarmed enemies.

They are in the power of the hostile Government, but not in that of the individuals or corps who captured them.

They must be humanely treated.

Any act of insubordination justifies the adoption of such measures of severity as may be necessary.

All their personal belongings except arms shall remain their property.

On the motion of his Excellency Mr. **Beernaert**, paragraph 4 of Article 23 is carried to Article 28, of which it will form the second paragraph.

After an exchange of views between his Excellency Mr. **Beernaert**, Mr. **Renault**, and Mr. **Lammasch**, the latter moves to add to the word "arms" in paragraph 5 "and everything that directly serves the purpose of the war."

On the motion of General **Zuccari**, paragraph 4 will read as follows: "All their personal belongings, except arms, horses, and military papers, remain their property."

His Excellency Mr. **Beernaert** proposes to stipulate by means of an express clause that commanders in chief may authorize officers to keep their swords.

Mr. **Renault** thinks that it is not proper to mention here what a belligerent *may* do. It is a question of determining only what he *must* do.

Mr. **Lammasch** deems that it would be useful to omit the definition of prisoners of war as contained in the first paragraph. If the word "disarmed" disappears from the article, it would not be necessary to make an express reservation as to the swords of the officers.

At the proposal of the **President** the following wording is adopted:

Prisoners of war are in the power of the hostile Government, but not in that of the individuals or corps who captured them.

[71] They must be humanely treated.

All their personal belongings, except arms, horses, and military papers, remain their property.

Article 24 is adopted as worded in the Brussels draft:

Prisoners of war may be interned in a town, fortress, camp, or other place, under obligation not to go beyond certain fixed limits; but they can only be placed in confinement as an indispensable measure of safety.

Articles 25 and 26 are now read:

#### ARTICLE 25

Prisoners of war may be employed on certain public works which have no direct connection with the operations in the theater of war and which are not excessive or humiliating to their military rank, if they belong to the army, or to their official or social position, if they do not belong to it.

They may also, subject to such regulations as may be drawn up by the military authorities, undertake private work.

Their wages shall go towards improving their position or shall be paid to them on their release. In this case the cost of maintenance may be deducted from said wages.

#### ARTICLE 26

Prisoners of war cannot be compelled in any way to take any part whatever in carrying on the operations of the war.

These articles are adopted tentatively.

However, his Excellency Mr. **Beernaert** will suggest a new wording at the next meeting.

Article 27 is now read:

The Government into whose hands prisoners of war have fallen charges itself with their maintenance.

The conditions of such maintenance may be settled by a reciprocal agreement between the belligerent parties.

In the absence of this agreement, and as a general principle, prisoners of war shall be treated as regards food and clothing, on the same footing as the troops of the Government which captured them.

His Excellency Mr. **Beernaert** proposes to supersede "the Government charges itself" by "the Government is charged," and to insert between the words "food and clothing" the word "quarters."

These proposals and the article thus amended are adopted.

Article 28 is now read:

Prisoners of war are subject to the laws and regulations in force in the army in whose power they are.

Arms may be used, after summoning, against a prisoner of war attempting to escape. If recaptured he is liable to disciplinary punishment or subject to a stricter surveillance.

If, after succeeding in escaping, he is again taken prisoner, he is not liable to punishment for his previous acts.

After an exchange of views between General **Zuccari** and his Excellency Mr. **Beernaert**, the subcommission decides to modify the first paragraph as follows: "Prisoners of war are subject to the laws, regulations, and *orders* in force in the army of the State in whose power they are."

The second paragraph will be composed of the old paragraph 4 of Article 23.

In view of the new wording of the first paragraph, the first part of the second paragraph is dropped.

Mr. **Lammasch** proposes to add to Article 28, paragraph 2 (former paragraph 4 of Article 23) the words: "An attempt at flight and a refusal to perform acts which they ought not to be compelled to perform shall not be considered as insubordination."

This motion is not carried.

In a discussion between Messrs. Colonel **Gilinsky**, **Lammasch**, Lieutenant Colonel **Khuepach**, Colonel **Gross von Schwarzhoff**, his Excellency Mr. **Beernaert**, Chevalier **Descamps** and **Rolin**, three opinions were expressed on the subject of escaped prisoners of war:

1. Mr. **Lammasch** is of opinion, in view of the conflict of duties existing with regard to a prisoner, that he should not be subjected to any punishment, even disciplinary, for an attempt to escape. He proposes to strike out in paragraph 3 (former paragraph 2) the words "liable to disciplinary punishment or" and to omit all of the old paragraph 3 beginning with the words "if, after succeeding."

2. Lieutenant Colonel **Khuepach** points out the anomaly in this article, which [72] subjects to disciplinary punishments those prisoners of war whose escape has not been successful and does not punish those who have succeeded in escaping; the former are subject to punishment, but the latter not; this is offering a premium on skill.

3. Colonel **Gilinsky** is of opinion that disciplinary punishments will not be sufficient to stop attempts to escape and that the guilty parties ought to be brought before a court-martial. He remarks that it seems impractical to limit to a disciplinary punishment the penalty inflicted for the flight of a prisoner of war. It will be impossible to place a strong guard over prisoners of war without



diminishing the number of combatants; and with a weak guard it will always be possible to escape. Will not shrewd persons take advantage of the almost absolute immunity in order to make frequent escapes and thus transmit information regarding the enemy to their army?

Mr. Rolin observes that at the Brussels Conference it was the unanimous opinion that the first paragraph should be applicable to crimes connected with attempts to escape, such as the murder of guards.

As the subcommission adopts this opinion, Mr. Gilinsky does not insist on his motion, but this is under the express reservation that the military authorities in case of crimes connected with attempts to escape will not inflict disciplinary penalties, but will try the guilty parties according to the military laws in force in the captor State.

His Excellency Mr. Beernaert finally proposes the following wording:

Escaped prisoners who are retaken before being able to rejoin their army are liable to disciplinary punishment.

Prisoners who, after succeeding in escaping, are again taken prisoners are not liable to any punishment for the previous flight.

Colonel Gross von Schwarzhoff proposes to add after the word "army" the words: "or before leaving the territory occupied by the army that captured them."

The wording proposed by his Excellency Mr. BEERNAERT and the amendment of Colonel GROSS VON SCHWARZHOFF meet general approval and the last two paragraphs of the article, thus worded, are adopted.

Article 29 is adopted with the wording of the Brussels draft:

Every prisoner of war is bound to give, if questioned on the subject, his true name and rank, and if he infringes this rule, he is liable to a curtailment of the advantages accorded to the prisoners of war of his class.

Article 30 is now read:

The exchange of prisoners of war is regulated by a mutual understanding between the belligerent parties.

This provision is dropped at the suggestion of Colonel GROSS VON SCHWARZHOFF as being superfluous.

Article 31 is now read:

Prisoners of war may be set at liberty on parole if the laws of their country allow it, and, in such cases, they are bound, on their personal honor, scrupulously to fulfill, both towards their own Government and the Government by which they were made prisoners, the engagements they have contracted.

In such cases their own Government ought neither to require of nor accept from them any service incompatible with the parole given.

This article is adopted except that the words "is bound neither to require of" are substituted for "ought neither to require of."

Article 32 is adopted with the wording of the Brussels draft:

A prisoner of war cannot be compelled to accept his liberty on parole; similarly the hostile Government is not obliged to accede to the request of the prisoner to be set at liberty on parole.

Article 33 is now read:

Any prisoner of war liberated on parole and recaptured bearing arms against the Government to which he had pledged his honor may be deprived of the rights accorded to prisoners of war and brought before the courts.

Upon an observation by Colonel **Gross von Schwarzhoff**, it is decided to insert the words "or against its allies" after "pledged his honor."

In regard to Article 34, different wordings were proposed by Messrs. **Odier**, **Lammasch**, **Beernaert**, and **Rahusen**.

In view of the agreement as to the main issue, the **President** proposes that these delegates reach an understanding on the form to be given to Article 34.

The meeting adjourns.

## THIRD MEETING

MAY 30, 1899

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**Mr. Martens** presiding.

The minutes of the second meeting are read and adopted.

Before beginning the deliberations, the **President** says that it is understood that in discussing the stipulations of the Brussels Declaration the delegates are supposed to be expressing simply their personal opinions and by no means to be committing their respective Governments.

The wording of Articles 25 and 26, proposed by his Excellency Mr. BEERNAERT and formulated as follows, is now read:

The State may utilize the labor of prisoners of war according to their rank and aptitude. The tasks cannot be excessive; they can have no connection with the operations of the war.

Prisoners may be authorized to work for the public service, for private persons, or on their own account.

Work done for the State is paid for at the rates in force for work of a similar kind done by soldiers of the national army

When the work is for other branches of the public service or for private persons, the conditions are settled in agreement with the ministry of war.

The wages of the prisoners shall go towards improving their position, and the balance shall be paid them at the time of their release, after deducting the cost of their maintenance.

The **President** remarks that the proposed wording works no change in the idea on which the articles of the draft Declaration of Brussels of 1874 were based. However, it offers the advantage of satisfying the opinions expressed at the previous meeting.

Mr. **Rolin** proposes that the words "ministry of war" be superseded by "the military authorities."

The wording thus amended is adopted.

Article 34 of the draft of 1874 is now read:

Individuals in the vicinity of armies but not directly forming part of them, such as correspondents, newspaper reporters, sutlers, contractors, etc., etc., can also be made prisoners. These prisoners should however be in possession of a permit issued by the competent authority and of a certificate of identity.

The **President** remarks that the subcommission has before it three propositions:

1. That of Messrs. ODIER and LAMMASCH, to resume the discussion of Article 23, already adopted, and to give it the following wording:

Individuals who form part of the belligerent armed forces, if they fall into the enemy's hands, must be treated as prisoners of war.

It is the same with bearers of official dispatches openly carrying out their mission, and with civilian aeronauts instructed to observe the enemy or to maintain communication between the various parts of the army or of the territory.

Persons who follow an army without belonging to it, such as newspaper correspondents, sutlers, contractors, and other individuals of similar occupation, if they are in possession of a permit issued by the competent authority and of a certificate of identity, shall likewise be treated as prisoners of war.

If this proposition is adopted the present Article 23 will become Article 24 and the present Article 34 will have to be omitted.

2. The alternative proposition, presented by Mr. LAMMASCH in the event that the first proposition should not be adopted. This wording of Article 34 has a simpler appearance and is worded as follows:

Other persons in the vicinity of armies, such as newspaper correspondents, sutlers, contractors, and other people of similar occupation shall have the same right to be treated as prisoners of war if they are in possession of a permit issued by the competent authority and of a certificate of identity.

3. That of Mr. ROLIN, which also has the merit of being simple besides embodying the additional advantage of avoiding a definition of the term "prisoners of war," which is a difficult definition to formulate and which it was agreed at the previous meeting to omit.

[74] This wording is as follows:

Individuals who follow an army without directly belonging to it, such as newspaper correspondents, and reporters, sutlers, and contractors, who fall into the enemy's hands and whom the latter thinks fit to detain, shall enjoy treatment as prisoners of war provided they are in possession of a certificate from the military authorities of the army they were accompanying.

The PRESIDENT thinks that Mr. ROLIN's wording is in conformity both with the sense of the present Article 34 and with the observations made at the previous meeting.

Mr. Odier does not insist on his proposition. He explains that his chief objection to Article 34 of the Brussels draft was based on the word "also," which would imply the necessity of saying first who may be made prisoners of war.

The proposition of Mr. ROLIN is accepted without discussion.

The additional articles to the chapter "Prisoners of war," proposed by his Excellency Mr. BEERNAERT, are now read.

#### ARTICLE 1

An information bureau relative to prisoners of war is instituted, on the commencement of hostilities, in each of the belligerent States and, when necessary, in neutral countries which have received belligerents in their territory. The function of this bureau is to reply to all inquiries about the prisoners, to receive from the various services concerned all the information necessary to enable it to make out an individual return for each prisoner of war. It is kept informed of internments and transfers, as well as of admissions into hospital and deaths.

It is likewise the function of the information bureau to receive and collect all objects

of personal use, valuables, letters, etc., found on the field of battle or left by prisoners who have died in hospitals or ambulances, and to forward them to those concerned.

#### ARTICLE 2

Relief societies for prisoners of war, which are properly constituted in accordance with the laws of their country and with the object of serving as the channel for charitable effort shall receive from the belligerents, for themselves and their duly accredited agents, the necessary facilities in order that they can efficiently perform their humane task within the bounds imposed by military necessities and administrative regulations. Agents of these societies may be admitted to the places of internment for the purpose of distributing relief, as also to the halting-places of repatriated prisoners, if furnished with a personal permit by the military authorities, and on giving an undertaking in writing to comply with all measures of order and police which the latter may issue.

#### ARTICLE 3

Information bureaux enjoy the privilege of free postage. Letters, money orders, and valuables, as well as parcels by post, intended for prisoners of war, or dispatched by them, shall be exempt from all postal duties in the countries of origin and destination, as well as in the countries they pass through.

Presents and relief in kind for prisoners of war shall be admitted free of all import or other duties, as well as of payments for carriage by State railways.

#### ARTICLE 4

Officers taken prisoners may receive, through a neutral Power, if necessary, the full pay allowed them in this position by their country's regulations, the amount to be refunded by their Government.

[75]

#### ARTICLE 5

Prisoners of war shall enjoy complete liberty in the exercise of their religion, including attendance at the services of whatever church they may belong to, on the sole condition that they comply with the measures of order and police issued by the military authorities.

#### ARTICLE 6

The wills of prisoners of war are received or drawn up in the same way as for soldiers of the national army.

The same rules shall be observed regarding death certificates as well as for the burial of prisoners of war, due regard being paid to their grade and rank.

#### ARTICLE 7

After the conclusion of peace, the repatriation of prisoners of war shall be carried out as quickly as possible.

No prisoner can be detained, nor his release be deferred for sentences delivered or events occurring since his capture, except for common law crimes or misdemeanors.

His Excellency Mr. **Beernaert** states the humanitarian and charitable aim of his proposition. Information bureaux are not a new institution, having operated as early as 1866 and 1870. They are the subject of Article 1. Article 2 requires that certain facilities be accorded to societies owing their origin to private initiative.

Articles 1 and 2 are adopted.

As regards Article 3, his Excellency Mr. **BEERNAERT** admits that the proposition might be deemed a little too broad; if so, it would be proper to transform it into a simple recommendation to be inserted in the minutes.

Mr. **Lammasch** would like to see the proposition adopted as an article. He

states that in comparison with the enormous expenses of a war, those involved by such a provision, which is of such great interest in mitigating the ills of prisoners, would be insignificant.

His Excellency Mr. **Beernaert**, while thanking Mr. **LAMMASCH** for his support, recalls that in 1870 thousands of prisoners were unable to gain possession of their letters and of the gifts from their relatives because they were unable to pay postage thereon. It was sufficient, for instance, to send quite a small charitable donation in order to enable the prisoners of Königsberg to come into possession of their mail, which consisted of several thousand letters.

General **den Beer Poortugael** seconds the motion of Mr. **LAMMASCH**.

Article 3 is unanimously adopted.

In regard to Article 4, Colonel **Gross von Schwarzhoff** proposes to omit the words "through a neutral Power."

This provision may give rise to complications; moreover, it is superfluous, since the information bureau created by Article 1 may take charge of this duty.

The amendment is accepted by his Excellency Mr. **Beernaert** and the article thus amended is adopted.

Articles 5 and 6 are adopted.

As regards Article 7, Colonel **Gross von Schwarzhoff** proposes that the second paragraph thereof be omitted, as being likely to hinder the exercise of the discipline which ought to be maintained and provided with sufficient sanction up to the last day of captivity of prisoners of war.

His Excellency Mr. **Beernaert** accepts the amendment. The first paragraph of Article 7 is adopted.

The **President** thanks Mr. **BEERNAERT** for his initiative which has brought about the adoption of the additional provisions which are so important and of such great humanitarian interest.

[76] The examination of the chapters entitled "Capitulations" and "Armistices" is now taken up.

Article 46 is read:

The conditions of capitulations are discussed between the contracting parties.

They must not be contrary to military honor.

Once settled by a convention, they must be scrupulously observed by both parties.

Mr. **Rahusen** considers Article 46 superfluous.

Mr. **Rolin** calls the attention of the subcommission to the fact that the second paragraph of this article is an addition to the original draft, the insertion of which was decided upon by the Conference of 1874, at the initiative of the delegate from the French Government.

The opinion of the reporter is that this clause is of great significance and that it would be a pity not to consider it.

An exchange of views showing that it is very difficult to define the idea of military honor now takes place between his Excellency Mr. **Beernaert**, Colonel **Gilinsky**, Colonel **Gross von Schwarzhoff**, General **den Beer Poortugael**, General **Zuccari**, Mr. **Lammasch**, and Chevalier **Descamps**.

Mr. **Zenil** proposes the following wording for the second paragraph: "They shall be in conformity with military honor according to the code of the victor."

General **den Beer Poortugael** and Colonel **Gross von Schwarzhoff** remark that it might be that the victor had no military code or that it contained no provisions.

The **President** observes that the article is of some utility because it affords some guaranty to the conquered party that humiliating conditions will not be imposed on him.

At the proposition of his Excellency **Turkhan Pasha**, it is decided to word the second paragraph as follows: "They must take into account the rules of military honor."

Article 46 thus amended is adopted.

Articles 47 and 48 are adopted as worded in the Brussels draft, thus:

#### ARTICLE 47

An armistice suspends military operations by mutual agreement, between the belligerent parties. If its duration is not defined, the belligerent parties may resume operations at any time, provided always that the enemy is warned within the time agreed upon, in accordance with the terms of the armistice.

#### ARTICLE 48

The armistice may be general or local. The first suspends the military operations of the belligerent States everywhere; the second only between certain fractions of the belligerent armies and within a fixed radius.

Article 49 is now read:

An armistice must be officially and without delay notified to the competent authorities and to the troops. Hostilities are suspended immediately after the notification.

Following an observation by Colonel **Gross von Schwarzhoff** and an exchange of views between Chevalier **Descamps**, **Rolin**, and his Excellency Mr. **Beernaert**, it is decided, on motion of his Excellency Mr. **BEERNAERT**, to add at the end of the article the words "or on a later date fixed."

The article thus amended is adopted.

Article 50 is now read:

It rests with the contracting parties to settle, in the terms of the armistice, what communications may be held between the populations.

A discussion ensues between his Excellency Mr. **Beernaert**, Colonel **Gross von Schwarzhoff**, Messrs. **Rolin**, **Rahusen**, and Lieutenant Colonel **Khuepach** in regard to the wording of this article, which appears incomplete.

On the proposition of Messrs. **Martens** and **Khuepach**, the following wording is adopted:

It rests with the contracting parties to settle, in the terms of the armistice, what communications may be held *with* and *between* the populations on the theater of war.

This wording, as observed by Mr. **Martens**, will leave the Governments free to make special arrangements as to all other matters in the armistice.

Article 51 is now read:

The violation of the armistice by one of the parties gives the other party the right of denouncing it.

Colonel **Gross von Schwarzhoff** remarks that the right to call off the armistice is not sufficient for all cases in which the conditions are not observed

[77] by one of the belligerents. For instance, by following Article 53 to the letter a body of troops suddenly attacked upon the breach of an armistice would not even have a right to defend itself. Leaving out of account this extreme case, an immediate resumption of operations may become necessary in order to prevent the enemy from securing advantages contrary to the clauses of the armistice. The following ought therefore to be added to Article 51: "or of recommencing hostilities immediately."

Mr. **Rolin** thinks he ought to point out that this wording would render it necessary to return to the original text set aside in 1874. It was not desired that hostilities should be resumed without a previous denunciation.

General **Zuccari** says that the denunciation is within the competency of a general in chief, whereas the resumption of hostilities depends in most cases on a subordinate commander.

Chevalier **Descamps** observes that the proposition of Colonel **GROSS VON SCHWARZHOFF** would render denunciation optional, whereas it ought to be compulsory.

Colonel **Gross von Schwarzhoff** inserts in the text of his proposition the words "in cases of urgency."

After an exchange of views between Messrs. **Rolin**, General **Zuccari**, **Rahusen**, Chevalier **Descamps**, and General **Mounier**, showing that it is necessary to define the character of the "violation," the following wording, due to Colonel **GROSS VON SCHWARZHOFF** and Chevalier **DESCAMPS**, is adopted:

Any serious violation of the armistice by one of the parties gives the other party the right of denouncing it, and even, in cases of urgency, of recommencing hostilities immediately.

Article 52 is adopted as worded in the Brussels draft, thus:

A violation of the terms of the armistice by individuals acting on their own initiative only entitles the injured party to demand the punishment of the offenders or, if necessary, compensation for the losses sustained.

The examination of the chapter entitled "Parlementaires" is now taken up. Article 43 is read:

A person is regarded as a parlementaire who has been authorized by one of the belligerents to enter into communication with the other, and who advances bearing a white flag, accompanied by a trumpeter (bugler or drummer) or also by a flag-bearer. He shall have a right to inviolability as well as the trumpeter (bugler or drummer) and the flag-bearer who accompany him.

This article is adopted with three slight modifications proposed by his Excellency Mr. **Beernaert** and General Sir **John Ardagh**:

1. Omission of the parentheses around the words "bugler or drummer."
2. The words "or by an interpreter" are added to the words "flag-bearer."
3. The words "he has a right" are substituted for the words "he shall have a right."

Article 44 is read:

The commander to whom a parlementaire is sent is not in all cases and under all conditions obliged to receive him.

It is lawful for him to take all the necessary steps to prevent the parlementaire taking advantage of his stay within the radius of the enemy's position to the prejudice of the latter,



and if the *parlementaire* has rendered himself guilty of such an abuse of confidence, he has the right to detain him temporarily.

He may likewise declare beforehand that he will not receive *parlementaires* during a certain period. *Parlementaires* presenting themselves after such a notification, from the side to which it has been given, forfeit the right of inviolability.

Colonel **Gross von Schwarzhoff** proposes that the third paragraph be omitted; in his opinion, it is important to maintain the absolute inviolability of *parlementaires*. Circumstances arise in which it is of paramount interest to enter into conference with the enemy, even if the latter should have declared that he does not wish to receive *parlementaires*.

His Excellency Count **Nigra** recalls the fact that the privilege of sending *parlementaires* flows from the law of nations. It is not proper for the Conference to admit that in certain cases this privilege may be removed at the will of the belligerent.

General **Mounier** believes that the second paragraph furnishes all the [78] necessary means for safeguard against abuses which might be made of the sending of *parlementaires*.

General **den Beer Poortugael** fears that such abuses may be serious.

Colonel **Gross von Schwarzhoff** points out that the belligerent who does not wish to receive *parlementaires* has but to cause them to be sent back by the outposts. Moreover, a declaration that *parlementaires* will not be received for a certain length of time will rarely be made.

Article 44, minus the last paragraph, is adopted.

Article 45 is likewise adopted as worded in the Brussels draft, thus:

The *parlementaire* loses his rights of inviolability if it is proved in a clear and incontestable manner that he has taken advantage of his privileged position to provoke or commit an act of treason.

The meeting adjourns.

## FOURTH MEETING

JUNE 1, 1899

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**Mr. Martens** presiding.

The minutes of the third meeting are read and adopted.

The **President** suggests that a change be made in the order of the day as adopted.

He proposes not to discuss the articles concerning "contributions and requisitions" after those on "military authority with respect to private persons," as was agreed upon at first, but to reserve the examination thereof in order to connect it with the chapter "on military authority over the territory of the hostile State." After Articles 36-39 the deliberations will then be on the chapter "Spies."

This proposal is adopted.

The **President** opens the discussion on Article 36:

The population of occupied territory cannot be forced to take part in military operations against its own country.

Colonel **Gilinsky** thinks it necessary to define the purport of this article by introducing therein the principle that it is a question solely of *direct* participation in the military operations on the battlefield. In his opinion a belligerent may force an inhabitant to furnish wagons, horses, etc.

His Excellency **Mr. Beernaert** is of opinion that the amendment completely modifies the purport of the article.

The inhabitants cannot be forced, directly or indirectly, to take part in military operations against their own country.

However, there are some measures to which they must submit; the belligerent may, for instance, compel the inhabitants to deliver up their horses and vehicles.

General **den Beer Poortugael** also thinks that the article ought to be maintained.

Colonel **Gross von Schwarzhoff** seconds the maintenance of the article, which has reference only to the population as a whole and not to individuals. It seems to him that this provision does not deprive the belligerents of the right to force an individual to perform some service, for instance to show the road.

Colonel **Gilinsky** does not insist on his proposal, and Article 36 is adopted without modification.

Article 37 is adopted as worded in the Brussels draft:

The population of occupied territory cannot be compelled to swear allegiance to the hostile Power.

[79] Article 38 is now read:

Family honor and rights, and the lives and property of persons, as well as their religious convictions and their practice, must be respected.

Private property cannot be confiscated.

His Excellency Mr. **Beernaert** considers that the provision in itself is excellent, but that the phrase "family honor and rights" is too vague.

General **den Beer Poortugael** thinks that it is neither necessary nor possible to define more in detail the sense of this article, the purport of which is evident.

Colonel **Gross von Schwarzhoff** desires to see added thereto the restriction "as far as military necessities permit." The belligerents ought to be able to force an individual, even by threatening his life.

Mr. **Lammasch** says that the amendment of Colonel **GROSS VON SCHWARZHOF** ought to affect only one part of the article; "family honor and rights, and religious convictions" ought at all events to be safeguarded.

Colonel **Gross von Schwarzhoff** answers that the necessities of war will not always permit all religious convictions to be respected.

Chevalier **Descamps** deems it contrary to the spirit of the Brussels draft to introduce into the different articles a special clause relating to the necessities of war. It is impossible to admit the destruction of human rights as a legal thesis although recourse is occasionally had thereto if necessary.

Mr. **Rolin** asks Colonel **GROSS VON SCHWARZHOF** to withdraw his amendment. As a matter of fact Article 38 lays down the general principle of respect for honor, the lives of individuals, and private property. It is not right to weaken the general principle by giving it the form of a doubtful declaration. The necessary restrictions are indicated in other articles, notably as regards requisitions.

Colonel **Gross von Schwarzhoff**, although not entirely sharing this opinion, withdraws his amendment provided it is thoroughly established that the declaration of Chevalier **DESCAMPS** gives an exact interpretation of the article.

Mr. **Odier** proposes to supersede, in the first paragraph of the article, the words "property of persons" by the phrase "private property whether belonging to individuals or corporations" as employed in the manual adopted by the Institute of International law at its session at Oxford in 1880.

The **President** remarks to Mr. **ODIER** that Article 8 of the Brussels draft treats of collective property.

His Excellency Mr. **Beernaert** proposes the formula: "the lives of individuals and private property."

Article 38 is adopted as follows:

Family honor and rights, the lives of persons, and private property, as well as religious convictions and practice must be respected.

Private property cannot be confiscated.

Article 39 is adopted as worded in the Brussels draft:

Pillage is formally forbidden.

Articles 35 and 56 are now read:

#### ARTICLE 35

The obligations of belligerents with respect to the service of the sick and wounded are

governed by the Geneva Convention of August 22, 1864, save such modifications as the latter may undergo.

## ARTICLE 56

The Geneva Convention applies to sick and wounded interned in neutral territory.

The **President** does not think that these provisions will occasion discussion.

They merely embody a statement that the rules of the Geneva Convention shall be observed; the last sentence of Article 35 also embodies a possible revision of the Geneva Convention, with which a future conference will perhaps soon be engaged.

General Sir **John Ardagh** asks to insert in the minutes that in his opinion the Geneva Convention needs revision.

The two articles are adopted.

The discussion of the chapter "Spies" is now taken up.

Article 19 is read:

A person can only be considered a spy when, acting clandestinely or on false pretenses, he obtains or endeavors to obtain information in the districts occupied by the enemy, with the intention of communicating it to the hostile party.

[80] Colonel **Gross von Schwarzhoff** proposes to supersede the words "districts occupied" by the words "territories occupied."

Colonel **von Schnack** observes that Article 1 gives a definition of the words "territories occupied," the sense of which is too limited for the application of Article 19. In order that there may be an act of espionage, it is not necessary that the territory in which this act is committed be in a state of occupation, but it is sufficient that the troops of one of the belligerents be there.

The article is adopted with the amendment of Colonel **GROSS VON SCHWARZHOFF**.

Article 20 is now read:

A spy taken in the act shall be tried and treated according to the laws in force in the army which captures him.

General **Mounier** requests the omission of this article for a reason similar to that which led to the suppression of several other articles of the draft submitted to the Brussels Conference. It would be hard for a spy, acting perhaps under orders from his superiors, to be condemned by virtue of a declaration signed by his own Government.

The **President** observes that this article, which gave rise to a deep discussion in 1874, is for the purpose of sanctioning the principle that a spy taken in the act shall be tried and shall not be executed at once.

On motion of Mr. **ROLIN**, Article 20 is adopted as follows: "A spy taken in the act shall not be punished without previous trial."

Article 21 is now read:

A spy who rejoins the army to which he belongs and who is subsequently captured by the enemy is treated as a prisoner of war and incurs no responsibility for his previous acts.

This article is adopted, save a slight modification proposed by his Excellency

**Mr. Beernaert.** The article is to begin with these words "A spy who, after rejoining the army to which he belongs, is captured, etc."

Article 22 is now read:

Soldiers not wearing a disguise who have penetrated into the zone of operations of the hostile army, for the purpose of obtaining information, are not considered spies.

Similarly, the following should not be considered spies, if they are captured by the enemy: soldiers (and also civilians, carrying out their mission openly), intrusted with the delivery of dispatches intended either for their own army or for the enemy's army.

To this class belong likewise, if they are captured, persons sent in balloons for the purpose of carrying dispatches and, generally, of maintaining communications between the different parts of an army or a territory.

His Excellency **Mr. Beernaert** is of opinion that this wording is very confusing.

The discussion of the three paragraphs of this article is now taken up.

The first paragraph is adopted without modification.

In the second paragraph, at the suggestion of his Excellency **Mr. BEERNAERT** the words "if they are captured by the enemy" are stricken out.

**Mr. Rolin** proposes the wording: "Soldiers and civilians carrying out their mission openly, intrusted with the delivery, etc."

Colonel **Gilinsky** proposes to insert after "civilians" the words "belonging to the army," or else to strike out the second paragraph; he fears that private individuals may provide themselves with a dispatch as a pretext to spy.

As **Mr. Rolin** observes that Article 19 would be applicable to them in this case, Colonel **Gilinsky** does not insist on maintaining his amendment, but asks that mention be made thereof in the minutes.

Messrs. **Bihourd** and Colonel **Gross von Schwarzhoff** ask that the second paragraph be omitted, as it appears to them to be equivalent to Article 19.

Messrs. **Rolin**, **Beldiman**, **Odier**, and Colonel **Coanda** advocate the maintenance of the article, which contains a safeguard against false interpretations to the detriment of non-military persons who are carrying dispatches in good faith.

After an exchange of views between Messrs. Colonel **Coanda**, Colonel **Gilinsky**, **Descamps**, and **Martens**, General **Mounier** proposes, in order to avoid the misunderstanding which may arise from the double definition of those who are considered as spies and those who are not, to connect Article 22 with Article 19 by means of the word "thus," and to have it follow as Article 20.

The purpose of this article will then be to declare by way of example, that certain categories of persons, who have sometimes been classified in practice as spies, shall not be considered as such.

[81] General **Zuccari** observes that at the present time so many persons are under arms that it is not necessary to use civilian dispatch bearers. He would be in favor of omitting the second paragraph.

The proposition of General **MOUNIER** and the wording of **Mr. ROLIN** are adopted.

The second paragraph of Article 20 (formerly 22) is therefore worded as follows:

Similarly, the following are not considered spies: soldiers and civilians carrying out their mission openly, entrusted with the delivery of dispatches intended either for their own army or for the enemy's army.

Paragraph 3 is adopted minus the words "if they are captured."

The chapter "Means of injuring the enemy" is now taken up.

Article 12 is read:

The laws of war do not recognize in belligerents an unlimited power in the adoption of means of injuring the enemy.

His Excellency Mr. **Beernaert** and Mr. **Rolin** propose the following wording, which is adopted: "The right of belligerents to adopt means of injuring the enemy is not unlimited."

Article 13 is read:

According to this principle are especially forbidden:

- a. Employment of poison or poisoned weapons;
- b. Murder by treachery of individuals belonging to the hostile nation or army;
- c. Murder of an enemy who, having laid down his arms or having no longer means of defense, has surrendered at discretion;
- d. The declaration that no quarter will be given;
- e. The employment of arms, projectiles or material calculated to cause unnecessary suffering, as well as the use of projectiles prohibited by the Declaration of St. Petersburg of 1868;
- f. Making improper use of a flag of truce, of the national flag or of the military insignia and uniform of the enemy, as well as the distinctive badges of the Geneva Convention;
- g. Any destruction or seizure of the enemy's property that is not imperatively demanded by the necessity of war.

The words "according to this principle" at the beginning of this provision are stricken out at the suggestion of his Excellency Mr. **Beernaert**.

Letter *a* is adopted.

Colonel **van Schnack** asks what is meant by the expression "murder by treachery." It seems to him that this wording is not correct.

After an exchange of views on this subject between Mr. **Beldiman**, his Excellency Mr. **Beernaert**, Messrs. **Rolin**, **Martens**, and General **Mounier**, Mr. **Lammasch** suggests the following wording: "the act of killing treacherously individuals belonging to the hostile nation or army."

This proposition is adopted.

It is decided likewise that the expression "act of killing" shall be substituted for the word "murder" under letter *c*.

Letter *d* is adopted without modification.

As to letter *e*, it is decided to eliminate therefrom the words "by the declaration of St. Petersburg of 1868," by reason of the decision reached yesterday by the first subcommission of the First Commission, which might result in an extension of said declaration.

Letter *f* is adopted.

In regard to letter *g*, Captain **Crozier** calls attention to the important question of the inviolability of private property on the sea in time of naval war.

He recognizes, however, that the examination of this question is not within the competence of this subcommission, the business of which is to revise the Brussels draft; but he would nevertheless like to have this question presented to the Conference.

Mr. **Rahusen** thinks it would be proper to expressly state, either in the [82] preamble or otherwise, that these articles in no wise apply to naval war.

Captain **Crozier**, who is joined by Mr. **Beldiman**, expresses a desire to have a place assigned in the deliberations of the Conference to this important subject.

The **President** considers that the plenary Commission should examine whether it is proper to propose that the Conference take up this subject.

It is decided that the declaration of Captain **Crozier** shall be inserted in the minutes.

As regards letter *g*, his Excellency Mr. **Beernaert** asks that the word "necessity" be put in the plural according to the customary form "the necessities of war."

Letter *g* is adopted.

The meeting adjourns.

## FIFTH MEETING

JUNE 3, 1899

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Mr. **Martens** presiding.

The minutes of the fourth meeting are read.

Captain **Crozier** remarks that at the preceding session he did not mean that the question of respect for private property at sea was not within the competency of this subcommission. He wished simply to say that within the program thus far observed by the subcommission this question had not formed part of its labors.

The minutes are adopted.

The **President** opens the discussion on the chapter: "Sieges and bombardments."

Article 15 is read:

Fortified places are alone liable to be besieged. Open towns, agglomerations of dwellings, or villages which are not defended can neither be attacked nor bombarded.

General **den Beer Poortugael**, recalling the fact that Captain **CROZIER** expressed a desire at the previous meeting to have the Conference take up the question of respect for private property at sea, a principle whose adoption has been warmly supported by the Netherlands delegation, declares that he desires on his part to express a similar wish, which he asks to have recorded in the minutes.

This desire is to have the prohibition against bombardment in Article 15 applied to both sea and land forces. Now, neither this subcommission nor the second subcommission of the First Commission appear competent to deal with this question. He therefore asks in what Commission it can be considered.

His Excellency Mr. **Beernaert** is of opinion that the distinction established by General **DEN BEER POORTUGAEL** between bombardment on land and that by naval forces is not well founded. It seems to him absolutely contrary to the spirit of the article that ships should be permitted to bombard places not liable to bombardment in land warfare. In order to settle the question, he proposes to add the word "ports" to the words "towns, etc."

General **den Beer Poortugael** indorses the proposition of his Excellency Mr. **BEERNAERT** provided mention is made in the minutes of the principle on which it is based.

Mr. **Bihourd** observes that, at the previous meeting, it was agreed that the Brussels Declaration related solely to land warfare; there would be a contradiction if the scope of Article 15 were extended to maritime warfare. It appears to him that there is a marked difference between maritime and land warfare as regards bombardments.



The **President** states that, as a matter of fact, the decision reached by the subcommission contemplates the scope indicated by Mr. BIHOUD.

General **Zuccari** observes that outside of land and naval wars there is also coast warfare. In which category shall the latter be placed? He indorses the observations of his Excellency Mr. **BEERNAERT**.

The **President** remarks that the two different questions presented should be [83] well defined. General **DEN BEER POORTUGAEL** has moved to utter a *vœu* in the minutes, whereas his Excellency Mr. **BEERNAERT** would like to add the word "ports" to the article.

His Excellency Mr. **Beernaert** considers that the bombardment of a port by a fleet relates rather to land warfare. At the most it is a mixed question. He asks how it could be laid down as a principle that the same town could be bombarded by a fleet and not by an army.

Chevalier **Descamps** says that as the question is certainly connected with the one before the subcommission, there seems to him to be no doubt about the competency of the latter. However, there is another standpoint. It is a question here of the territorial sea, and the question therefore does not embrace naval warfare proper.

General **den Beer Poortugael** desires to say that he no longer entertains any doubt as to the question of competency. He supports the proposal of his Excellency Mr. **BEERNAERT** and Chevalier **DESCAMPS**.

General **Zuccari** adds that in this question, while the means are maritime the object almost always has to do with the land.

The **President** asks whether it would not therefore be proper to simply state in the minutes that the subcommission interprets Article 15 as meaning that ports may not be bombarded any more than open towns.

His Excellency Mr. **Beernaert** asks Mr. **BIHOUD** whether he would not consent to having the question settled in the sense indicated by the **PRESIDENT**; he remarks that in case of debarkation naval forces may become land forces by virtue of that fact alone.

Colonel **Gilinsky** proposes that the decision of this question be referred to the plenary session of the Commission with all the members present, including sailors.

This proposition is adopted.

Colonel **Gross von Schwarzhoff** moves to strike out the first sentence of Article 15. It is useless to say that fortified places are liable to be besieged, which, moreover, is not complete, since the existence of field fortifications may make it necessary to besiege a place which is not fortified. The second sentence, in which the places which may neither be attacked nor bombarded are designated, is sufficient.

Messrs, **Rolin** and General **den Beer Poortugael** indorse this opinion, and the motion of Colonel **GROSS VON SCHWARZHOFF** is adopted.

Mr. **Lammasch** suggests an amendment relating to both Article 15 and Article 16. He is of opinion that bombardment should be expressly prohibited both of an isolated dwelling and of an uninhabited building, for instance a large mansion or a church.

General **den Beer Poortugael** observes that such a definition is contrary to the rules of military terminology. Isolated buildings are never "bombarded."

After an exchange of views on this point, the following wording is adopted:

"towns, villages, dwellings, or buildings which are not defended can neither be attacked nor bombarded."

Article 16 is read:

But if a town or fortress, agglomeration of dwellings or village, is defended, the officer in command of an attacking force must, before commencing a bombardment, except in assault, do all in his power to warn the authorities.

His Excellency Mr. **Beernaert** points out that the right to bombard should not be recognized, and he thinks that Article 16 should be modified.

After a thorough exchange of views, in which his Excellency Mr. **Beernaert**, Messrs. **Rolin**, **Gilinsky**, **Lammasch**, and Colonel **Gross von Schwarzhoff** took part, the following wording is unanimously adopted, except one vote (Great Britain):

The officer in command of an attacking force must, before commencing a bombardment, except in cases of assault, do all in his power to warn the authorities.

Article 17 is read:

In such cases all necessary steps must be taken to spare, as far as possible, buildings dedicated to art, science, or charitable purposes, hospitals, and places where the sick and wounded are collected provided they are not being used at the time for military purposes.

It is the duty of the besieged to indicate the presence of such buildings by distinctive and visible signs to be communicated to the enemy beforehand.

The first paragraph of this Article 17 is adopted as follows:

[84] In sieges and bombardments, all necessary steps must be taken to spare, as far as it is possible, buildings dedicated to religion, art, science, or charitable purposes, hospitals and places where the sick and wounded are collected, provided they are not being used at the time for military purposes.

The second paragraph is adopted without modification.

Article 18 is read:

A town taken by assault ought not to be given over to pillage by the victorious troops.

Colonel **Gross von Schwarzhoff** remarks that the article is superfluous in addition to Article 39.

On motion of Mr. **DESCAMPS**, this provision is worded as follows: "It is forbidden to give over to pillage a town taken by storm."

The chapter "On belligerents and wounded cared for in neutral countries" is now taken up for examination.

His Excellency Mr. **Eyschen** thinks he ought to embrace this opportunity to submit to the Conference the question whether it would not be well to define more accurately the international situation arising from neutrality, as the articles now to be taken up deal with neutrals.

At present it is very difficult to know precisely what their rights and duties are. Now, it is important to determine these rights and duties as far as possible in time of peace while it is possible to deliberate without the influence of passion and to judge in accordance with general views.

This would obviously be in the interest of the belligerent, who, being uncertain as to the line of conduct that will be adopted by neutrals, will often be very much hindered in his movements.

It would be quite as important for neutrals to know their obligations. In case of war this would spare them much uncertainty and painful hesitancy, unforeseen recriminations, and endless complications, while at the same time facilitating the duty incumbent on them of bringing, by calm and impartial conduct, an element of pacification into international relations. From this standpoint, this question is intimately connected with the task of the Conference.

While it is impossible not to realize the great difficulty of the question presented, we must not lose sight of the important advantage of being definite right now in order to take, while there is still time, the legislative and other measures necessary in order to insure in time of war the observation of the duties in question.

The proclamation of such an international statute would facilitate the task of Governments, Parliaments, the press, and all well-intentioned people whose cooperation is necessary.

And even if success in formulating precise rules were not always attained, it would be useful at all events to have it stated by the Conference that there is a controversy on certain points. In these cases pretensions would be less and conduct more restrained.

Finally, it would perhaps be easy to reach an understanding on the mode of procedure, in case of a dispute, with regard to an alleged violation of neutrality, which would be of importance to weak States.

By dealing with all these questions the Conference would get a positive result, calculated to satisfy not only the States that are sometimes belligerents and sometimes neutrals, but also all the more essentially pacific peoples.

The **President** thanks his Excellency Mr. EYSCHEN for his interesting statement. He wonders, however, whether the subcommission is in a position to make an examination of this very complicated question, its instructions being solely to examine the articles of the Brussels Declaration.

Chevalier **Descamps** is of opinion that this is a question closely connected with the purpose of the Conference; however, it would evidently be too extensive a task for it to prepare a code of neutrality. It might confine itself to elucidating some questions connected more directly with the articles of the Brussels Declaration. By acting thus the Commission would not be exceeding its instructions. According to him, the best way to proceed would be to have a committee of several members agree to examine whether and how it would be possible to reach a result on certain points coming within the scope indicated.

His Excellency Mr. **Eyschen** did not wish to ask the Conference to prepare at once a complete code of neutrality. He wished principally to point out the gap existing so as to see whether it could be filled at least partially. Al-  
[85] most all disputes regarding observation of neutrality arise from a diversity of opinion as to the rights and duties of neutrals. This uncertainty is of the greatest danger for both.

The **President** expresses doubts as to the possibility of realizing within a few weeks this end which the most eminent jurists, such as those of the Institute of International Law, have not been able to attain in twenty-five years.

Would not his Excellency Mr. EYSCHEN be satisfied if the Conference would express a wish to have this question studied by a future conference?

Baron **Bildt** emphasizes the importance of the proposition of his Excellency Mr. EYSCHEN, whose purpose is great and noble, but he questions whether this subcommission is really the forum where it ought to be discussed. In his opinion, this proposition comes within the sphere of jurisdiction of the Conference in plenary session. It alone can designate a committee to examine the proposition. The subcommission should confine itself to examining the questions of neutrality connected strictly with the Brussels Declaration.

After an exchange of views between the **President**, his Excellency Mr. **Beernaert**, Chevalier **Descamps**, and Count **de Selir**, Mr. **Beldiman** expresses himself as being in favor of the principle which his Excellency Mr. EYSCHEN evolved in his statement regarding the question of neutrality. He thinks that, before definitely deciding whether it is proper to enter upon the course suggested by the first delegate from Luxemburg, it would be useful for his Excellency to explain the exact points which might come within the scope of the labors assigned to the subcommission, and to present to the next meeting a more concrete basis for discussion.

This motion, seconded by Chevalier **Descamps**, is carried by the subcommission.

His Excellency Mr. **Eyschen** declares that he will endeavor to submit to the subcommission, for discussion at the next meeting, some formulated articles on the questions of neutrality connected with Article 53 and following on the order of the day of this meeting.

Mr. **Odier** declares that the instructions from his Government do not permit him to enter into a discussion of the questions connected with the rights and duties of neutrals. Nor do these questions, in his opinion, form part of the program of the Conference.

Mr. **Stancioff** thinks that the question of neutrality does not come within the domain of the labors of the Conference. The Bulgarian delegation will therefore not express an opinion in this regard.

The meeting adjourns.

## SIXTH MEETING

JUNE 6, 1899

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Mr. Martens presiding.

The minutes of the fifth meeting are read and adopted.

The **President** has a letter read which was addressed to him by his Excellency Mr. EYSCHEN. This letter, an extract from which has been printed and communicated to the members, is couched in the following terms:

THE HAGUE, *June 5, 1899.*

MR. PRESIDENT:

I have had the honor to call the attention of the second subcommission to the usefulness of determining the "Rights and duties of neutral States" and I had proposed a preliminary meeting of the delegate members who are specially interested in these questions.

[86] The subcommission was in favor of confining itself to examining the questions coming within the scope of the Brussels draft Declaration concerning the laws and customs of war. It asked me to examine whether it would be possible to frame some propositions relating to Articles 53 to 56 of that Declaration.

These articles have in view only the treatment of interned belligerents and wounded persons cared for in neutral countries.

Along this line of ideas we might determine the inviolability of neutrals and the principles relating thereto, define the obligation of a neutral State not to receive any belligerents on its territory, provide for cases of violation of these principles and the consequences which may result therefrom as regards belligerent and neutral States.

In going into details of wording I could not fail to see that, while this subject may be connected to some slight extent with Articles 53 to 56 of the Brussels Declaration, it is nevertheless much more closely connected with other general principles of neutrality, the simultaneous discussion of which cannot be avoided.

I persist in believing that a general examination of the questions relating to neutrality will be necessary in future.

I should therefore be glad if something could be done along this line and in any event if, in accordance with the suggestion of its honorable President, the Commission would express a *vœu* that this question be placed on the program of the next congress.

Please accept, Mr. PRESIDENT, the assurances of my high consideration.

(Signed) EYSCHEN,  
*Delegate from Luxemburg.*

His Excellency Mr. Eyschen says that it is a duty of courtesy for him to give the assembly some explanations as to the direction in which he sought to

discharge his mission. The subcommission had requested him to formulate some propositions connected with the articles concerning the internment of belligerents and the passage of wounded in neutral countries.

The provisions contained in these articles constitute exceptions to the general principle that a neutral State, in its impartiality, should not receive or allow one of the belligerents to pass over its territory.

This general rule might have been formulated, but on the contrary the duty of the belligerent to respect the territory of the neutral State might also have been defined, and this principle might have been reenforced by saying that the inviolability of neutral territory is placed, just as are for instance *parlementaires*, under the safeguard of the military honor of the belligerents.

Along this line of thought it was again natural to provide for the violation of these principles and the consequences which would arise therefrom with respect to the two parties. This subject has already been treated by Articles 5, 6, and 7 of the conclusions adopted at The Hague by the Institute of International Law under date of August 30, 1875. According to that text it would be necessary, in order to render a Government responsible, that it should have a hostile intention or exhibit real negligence. Only in serious and urgent cases and only during the existence of war has the injured Power the right to consider neutrality as abandoned and to resort to force to defend itself against the State which has violated neutrality. In cases of a minor character or where the matter is not urgent, or after the war is over, complaints of this character should be settled exclusively by arbitration. This jurisdiction decides *ex aequo et bono* on the question of damages which the neutral State should, by reason of its responsibility, pay to the injured State, either for the State itself or for its nationals.

It must be admitted that a debate arising on these various points had necessarily to involve a discussion of the fundamental rules of neutrality. The subcommission had declared previously that it desired to avoid this result when it decided to adhere as far as possible to an examination of the Brussels Declaration, which is the only thing it considers itself competent to do.

Another incident has come in to modify the situation. Mr. EYSCHEN had declared that he wished to act in this question in concert with the delegates from the States which have an interest similar to that of Luxemburg. The delegate from Switzerland, Dr. ROTH, having had to leave suddenly, it was not even possible to attempt this agreement.

The only thing, therefore, remaining to be done is to prepare for the future.

The **President** proposes to adopt a *vaux* that the question of the regulation [87] of the rights and duties of neutral States be postponed for the study of a future conference.

The subcommission accepts this resolution and mention will be made thereof in the minutes.

The **President** opens the discussion on Article 53:

A neutral State which receives on its territory troops belonging to the belligerent armies shall intern them, as far as possible, at a distance from the theater of war.

It may keep them in camps and even confine them in fortresses or in places set apart for this purpose.

It shall decide whether officers can be left at liberty on giving their parole not to leave the neutral territory without permission.

His Excellency Mr. Eyschen, delegate from Luxemburg, calls the attention

of the subcommission to the peculiar situation in which the treaty of London of 1867 places his country with respect to the matter regulated by Article 53.

The intention of this treaty was to deprive Luxemburg of its ancient strategic importance. It decided that Luxemburg should cease to be a fortified town, that the stronghold should be converted into an open town, that the fortifications should not be restored in future and that no military establishments should be created or maintained. The country is allowed to have only the number of troops necessary for the maintenance of order.

The result is that, by a decision of the Powers, Luxemburg is rendered unable to assume the same obligations as other States. Under these circumstances Mr. EYSCHEN thinks he ought to ask that note be taken of the fact that he called the attention of the Conference to Articles 2, 3, and 5 of the London treaty of May 11, 1867, and that he intends to reserve to his country all the rights which flow therefrom.

The **President** takes note of the declaration of his Excellency Mr. EYSCHEN.

Mr. **Stancioff** proposes to supplant the words "shall intern them" by "shall remove them."

Upon an explanation by the **President**, he does not insist on the maintenance of his motion, and the article is adopted without modification.

Article 54, as worded in the Brussels draft, is likewise adopted:

In the absence of a special convention, the neutral State shall supply the interned with the food, clothing, and relief required by humanity.

At the conclusion of peace the expenses caused by the internment shall be made good.

Article 55 is read:

A neutral State may authorize the passage through its territory of the wounded or sick belonging to the belligerent armies, on condition that the trains bringing them shall carry neither personnel nor material of war.

In such a case, the neutral State is bound to take whatever measures of safety and control are necessary for the purpose.

Lieutenant Colonel **von Khuepach** thinks it would be suitable to add to the words "personnel nor material of war" in the first paragraph the words "which exceed the amount necessary for the care of the sick and wounded of the convoy."

On the proposition of his Excellency Mr. **Beernaert**, who points out that such is really the sense of the article, it is decided that the interpretation of the Austro-Hungarian delegate shall be mentioned in the minutes.

General **Mounier** observes that Article 55 may afford a considerable advantage to one of the belligerents. The passage of the wounded across the neutral territory opens up the line of communication of that army. It may thus communicate more easily with its base of operations. There is therefore here a special advantage in favor of the belligerent who is enabled to profit thereby, and no longer a humanitarian advantage.

His Excellency Mr. **Beernaert** is of opinion that the article was inspired solely by humanitarian interests. The only thing contemplated was the interest of those wounded on the field of battle.

General **Mounier** answers that the provision leaves to the neutral the choice of the belligerent to whom he wishes to grant this advantage. It will therefore

be necessary to introduce into the article a restriction as regards the case of *vis major* or absolute necessity.

His Excellency Mr. **Eyschen** cites a practical example: In 1870, after the three battles of Metz, Germany asked of Belgium and Luxemburg the permission to have the German and French wounded pass over their territory. Belgium, after consulting England, refused, while Luxemburg on the contrary granted the passage. The reason for Germany's request was as follows: Three days of battle under a burning sun and with a lack of water rendered the sanitary situation most critical. It was a question of the interests of the wounded, and also of the general hygiene of the country.

After Sedan, Germany renewed her request, and this time Belgium granted it. In the park of Bazeilles there were 3,000 wounded, sleeping day and night in the rain. Now, Germany could employ only the Belgian railroads, and Belgium therefore performed a humane duty.

[88] Mr. **EYSCHEN** thinks that it is not going too far to say that a neutral State may authorize the passage, provided the general duties of neutrality are observed, which consist in not granting to one what is not granted to the other.

His Excellency Mr. **Beernaert** answers General **MOUNIER** that he is right when he says that a neutral who granted passage to one of the belligerents without treating the other likewise would be showing partiality and violating the duties of neutrality; but the very text of the article would be contrary to such a mode of procedure, for it says: "to the *armies*" and not "to the *army*."

General **Mounier** insists on the inequality of treatment which may arise from Article 55, according to circumstances. If the wounded Germans at Sedan were well treated, this was owing to the use of the Belgian railroads.

The example cited by his Excellency Mr. **EYSCHEN** shows that there was inequality in this case, as there always will be. The wounded confined at Metz could not avail themselves of transportation via Luxemburg. We must look at the question from a more general standpoint. If a Power has the assistance of a neutral railroad for its wounded, its strategic routes for the transportation of its fresh troops are cleared to just that extent.

Chevalier **Descamps** observes that the question is to find out whether there is any interference in the hostilities on the part of the neutral. This is the sole principle to be kept in view. The question must be asked, not whether a more or less considerable favor has actually been accorded, but whether one of the belligerents has been intentionally favored.

Colonel **Gross von Schwarzhoff** is of General **MOUNIER**'s opinion as far as the technical question is concerned. However, there are cases in which the laws of humanity ought to be more respected than those of war. As for that matter, though, the inequality is but apparent, for the transportation of the wounded of the two armies gathered upon the field of battle is done by the victorious army, which constitutes a double burden for it.

General **Mounier** says this also is his opinion; but he merely remarks that the *choice* is given to the neutral. If the word *shall* were substituted for the word *may* the question would no longer be doubtful.

His Excellency Mr. **Beernaert** protests against this conception. It is impossible to *impose* on a neutral State the obligation to allow passage over its territory. As a matter of fact, the observation of General **MOUNIER** would lead to the suppression of the article.

The **President** recalls the historical as well as juridical basis of the provi-



sion. The principle was adopted by the States represented at the Brussels Conference in 1874 out of motives of humanity, and the Brussels Declaration sanctioned it. It is certain that, if the neutral State does not act impartially in applying this article, the State to whose detriment it has acted will protest. It is therefore necessary to leave to the neutral the privilege of performing this act of humanity on his own responsibility.

Owing to these considerations he asks General MOUNIER not to insist on the modification of the article.

Mr. **Lammasch** proposes a compromise formula: "If the interests of humanity require, the neutral shall authorize the passage, etc."

His Excellency Mr. **Beernaert** and Chevalier **Descamps** oppose any idea of obligation.

His Excellency Count **Nigra** proposes that note be taken of the declarations which have been made; the minutes will serve as evidence to show the spirit in which the Conference interprets this article.

His Excellency Mr. **Beernaert** acquiesces in this proposition.

The **President** proposes the following wording: "The nation may, on its own responsibility with regard to the two belligerents, authorize the passage, etc."

General **Mounier** would prefer: "shall have a right to refuse."

It is decided to refer the final wording of the article to a future meeting.

The discussion of Chapters I, II and IX of the draft Declaration of Brussels is now taken up.

His Excellency Mr. **Beernaert** delivers the following address:

Before beginning the examination of Chapters I, II, and IX of the Brussels Declaration, I ask leave to make a few remarks which seem to me applicable to all three in common.

The idea which inspired them is wholly humanitarian, as is the case for [89] that matter with the whole draft of 1874. It is a question of reducing the evils of an invasion as far as possible, by regulating it or rather outlining a path for it; but in order to attain this end it is desired that the vanquished shall recognize the invader in advance as having certain rights on his territory, and that populations be in some sort forbidden to mingle with the war.

Hence, gentlemen, arose grave difficulties, which in 1874 long arrested the plenipotentiaries assembled at Brussels and which made it impossible for them to reach any result. As a matter of fact there was no convention at that time. The final protocol of the Conference offers its work, only "as a theoretical and preparatory study, as a conscientious investigation, calculated to serve as the basis for subsequent exchange of ideas."

The work therefore remains to be done; we are now engaged in it and we have it three-fourths finished, but however great our willingness may be, I am afraid that if we wish to regulate everything and to decide everything conventionally, we shall meet the same difficulties as before.

In my opinion there are certain points which cannot be the subject of a convention and which it would be better to leave, as at present, under the governance of that tacit and common law which arises from the principles of the law of nations.

I shall confine myself to indicating to you two considerations in support of my views:

I. Under the Brussels draft the conquered or invaded country recognizes the invader in advance as having rights on its territory.

The invader is to maintain the existing laws, or change them, and he is to enforce them (Article 3).

The officials of the invaded country are authorized to place themselves in the service of the conqueror, if they deem fit, and some guaranties are even stipulated in their behalf in this case. This is the object of Article 4.

The invader is authorized to collect existing taxes for his benefit (Article 5), and this right is singularly amplified by Articles 40, 41, and 42. Therein the enemy is conventionally authorized to levy new taxes, to make requisitions, and even to impose fines on the invaded country.

Such a conventional engagement does not really seem admissible to me.

Not that I wish to criticize the fact. Things have always happened thus, and they will doubtless continue to be the same, so long as humanity does not give up war. But, although it is natural for the conqueror to derive the power to act thus from victory, I cannot understand a convention giving him the right. Furthermore, I believe that such a notion would be ill received by parliaments, which will be called upon to approve our work.

What I have just said is true, even in the case of big States. Is it conceivable that the State that is beaten would grant rights to its conqueror in its own territory, in advance and in case of war, and that it would organize a régime of defeat? Could it be by the anticipated and written consent of the conquered party that the conqueror would levy taxes and impose fines or engage in his service officials whose first duty is to be faithful to their own country? I admit that there might in fact be some advantages in this, that civil order would be better preserved, and that the invaded populations would suffer less; but such a regulation would encounter objections of a moral and patriotic nature, which seem hardly surmountable. It does not seem to me that one can sanction in advance as a right that which necessarily belongs to the domain of fact and force.

And this appears still more evident in the case of small countries which in the nature of things cannot be invaders but are subject to being invaded. Here there is not even that uncertainty, that reciprocity of risks, which I just pointed out.

As regards Belgium, you know that her situation is peculiar. She is neutral and this neutrality is guaranteed by the great Powers and notably by our powerful neighbors. We cannot therefore be invaded, and how could the Belgian Government submit to the approval of our legislature a convention providing for the failure of great States in their pledges toward us, sanctioning in advance acts which could but constitute an incontestable abuse of force?

I therefore think that from every standpoint there are situations here which it is better to leave to the domain of the law of nations, however vague it may be. We cannot here transform fact into law, and this would be the inevitable result, for we must regard the case at once from the standpoint of both invader and invaded. The country occupied is placed under the law of the conqueror; this is a fact; it is force and uncontrollable force at that; but we cannot in advance legitimate the use of this force and recognize it as law. It is certainly not possible for the conqueror to legislate, administer, punish, and levy taxes with the previous and written consent of the conquered.

This can only become regular upon the conclusion of peace, for only then, if a treaty confirms the conquest, will new bonds of law be established.

[90] Some have invoked the interest of the occupied country, and especially that of small countries.

Well, speaking in behalf of a small country, often trampled and cruelly so by invasion, I prefer the continuance of the present situation rather than the peril of uncertainties.

In my opinion we ought only to adopt provisions which, admitting the fact without recognizing the right of the conqueror, would involve a pledge on the part of the latter to exercise his right moderately. For instance there is nothing to prevent pledging oneself in advance to respect private property and buildings devoted to arts and charitable uses, and to levy taxes or make requisitions under certain given conditions. And such is the spirit which has animated all the votes given up to the present.

Thus Articles 3, 4, and 5 of Chapter I might be omitted, as well as Chapter IX, preserving the essential provisions of Chapter I, supplemented by some restrictive provisions in the matter of taxes and requisitions.

II. The second set of remarks which I wish to make to you apply rather to Articles 9, 10, and 11.

Who are the belligerents? What part may populations take in the war, either before or after occupation?

Here again I observe in the Brussels draft the same solicitude, which is very laudable in itself, namely, to reduce the evils of war and the sufferings which it involves; and when such a purpose is being pursued by one of the most powerful monarchs in the world, nothing is more worthy of praise.

But by undertaking to restrict war to States only, the citizens remaining to a certain extent only mere spectators, would not the risk be run of reducing the factors of resistance by weakening the powerful mainspring of patriotism? Is it not the first duty of a citizen to defend his country, and is it not to the fulfillment of this duty that we all owe the most beautiful pages of our national history?

On the other hand, would not telling the citizens not to mingle in the struggles in which the fate of their country is at stake be further encouraging that baneful indifference which is perhaps one of the gravest evils from which our times suffer?

Small countries especially need to fill out their factors of defense by availing themselves of all their resources, and you will permit me to say a few more words concerning my own country.

Our territory is extremely small, but its geographical situation is of great importance and this is the reason why we have so often been the battlefield of Europe.

Hence the creation of our neutrality, which has not only our own interest in view.

We scrupulously respect the conditions of this neutrality and we do all we can in order to be able to enforce its respect in case of necessity.

Hence the great expenditures which we have made at Antwerp and more recently on the shores of the Meuse. We have wished to remove even the temptation which belligerents might have to use our territory for strategic purposes.

I have already said that it could not be admitted that the guaranteeing nations could fail in their pledges toward us when we shall certainly not give them

the least pretext; but here is where we have to assume that we would be invaded.

Now let us suppose such a contingency to occur. Our country is so limited in extent that it might be occupied by surprise in almost its entirety in two days, our army being driven back to Antwerp, the redoubt of resistance.

Could we, in view of this grave situation, liberate to any extent our citizens from their duty to their country, by at least seeming to advise them against contributing toward resistance?

Would this not truly be a grave matter? And here again, would it not be better, in the interest of all, not to attempt the regulation by convention of interests which lend themselves only with difficulty to regulation by convention, but rather to leave the matter to the law of nations and to that incessant progress of ideas which the present Conference and the high initiative from which it emanates will so powerfully encourage! (*Applause.*)

Consequently, his Excellency Mr. BEERNAERT proposes:

1. To omit Articles 3, 4, 5, 40, 41 and 42.
2. To omit in Article 2 the words "being suspended and."
3. In Article 6, paragraph 2, to indicate that it can only be a question of sequestration (inviolability already admitted for private property).
4. To add in Article 6 this new paragraph: "The plant of railways comprising from neutral States, whether the property of these States or of companies, shall be sent back to them as soon as possible, and shall not be utilized for military operations."
5. To insert two new articles:

A. The army of occupation shall not be allowed to levy any taxes on the occupied territory until after a decision by and on the responsibility of the commander in chief or of the superior civilian authority established by him.

These taxes shall as far as possible be levied in accordance with the rules of assessment and incidence in force in the occupied territories.

B. The occupying army shall not be allowed to make any requisitions in kind except by written order of the commander in the locality occupied.

For every requisition compensation shall be given or a receipt delivered.

On motion by Mr. **Beldiman**, it is decided to have printed and distributed as soon as possible the interesting speech of his Excellency Mr. BEERNAERT.

Mr. **Martens**, having taken the floor, says:

GENTLEMEN: Before beginning the discussion of the most important articles of the Brussels Declaration of 1874, I will ask permission to submit some considerations to you regarding the history of these provisions.

His Majesty the Emperor ALEXANDER II, being imbued with an idea of the importance of forming rules relating to the laws and customs of war in time of peace, when the minds and passions of people are not inflamed, took the initiative in convoking the Brussels Conference of 1874.

The Emperor had in mind the well-known historical facts, which demonstrate how in war time mutual recriminations and mutual hatred aggravate the inevitable atrocities of warfare. Moreover, the uncertainty of the belligerents regarding the laws and customs of war provokes not only hatred but also useless cruelties committed on the field of battle.

The initiative of my august sovereign was not all due to a new idea. Already during the War of Secession, had President LINCOLN directed Professor

LIEBER to prepare instructions for the armies of General GRANT. These regulations not only resulted in great benefit to the United States troops, but also to those of the Southern Confederacy. Those are circumstances in which the very force of events called forth the idea of regulating the laws of war. The example had been set. The Brussels Declaration brought about by ALEXANDER II was the logical and natural development thereof.

The importance of that declaration consists in the following: For the first time an agreement was to be established between Powers regarding the laws of war really binding on the armies of the belligerent States, in order to shield the innocent, peaceful, and unarmed populations against useless cruelties of war and the evils of invasion where not required by the imperious necessities of the war.

It was said in 1874, and it has been said to-day, that it is preferable to leave these questions in "a vague state and in the exclusive domain of the law of nations." But is this opinion quite just? Is this uncertainty advantageous to the weak? Do the weak become stronger because the *duties* of the strong are not determined? Do the strong become weaker because their *rights* are specifically defined and consequently limited? I do not think so. I am fully convinced that it is particularly in the interest of the weak that these rights and duties be defined. It is impossible to compel the stronger to respect the rights of the weaker if the *duties* of the latter are not recognized.

Those who have caused the idea of humanity to progress in the practice of war are not so much the philanthropists and publicists as the great captains, such as Gustavus Adolphus, who have seen war with their own eyes. Being obliged to place a curb on the inflamed passions of their soldiers, they inaugurated a discipline in their armies, which was the source of the regulation of the usages of war, which discipline was all the more necessary in case of invasion of a hostile territory.

If there are laws of war—and no one denies this fact—it is absolutely necessary to come to an agreement in determining them.

Being animated by the desire to bring our intelligence into play in examining these laws and customs of war, we have thus far worked in concert along this line, and we have been able to solve most of the questions submitted to us.

Now that we have reached the most important articles of the Brussels Declaration, it would be a pity to leave in a vague condition the questions which relate to the first articles on occupation and combatants.

I know it is said that we ought to leave the solution of these questions [92] to the practice of war, to the generally recognized principles of the law of nations, and, finally, to the hearts of the captains, commanders in chief, and military authorities. But, gentlemen, the heart has purposes which the mind does not understand and in time of war only one purpose is recognized, and that is the purpose of the war. I bow with respect before the great deeds which the human heart has performed during war and on the field of battle. The Red Cross is the best proof of this. But, gentlemen, the noble sentiments of the human heart unfortunately very often remain a closed book in the midst of combats.

Our present task is to remind peoples of their duties, not only in time of peace but also in time of war. Our mission has been well defined from the very beginning of our common labors: we wish to elaborate, in a spirit of concord,

humanity, and justice, the uniform bases for the instructions which the Governments will pledge themselves to give to their armed land forces. We have always recognized the imperious law of the inexorable necessities of war. We do not wish either to encroach on the rights of military independence of States, or to close our eyes before the differences which exist in the situation of States represented here, at the Conference.

However, permit me to believe that we are unanimous in the desire to mitigate, as far as possible, the cruelties and disasters in international conflicts which are not in any wise rendered inevitable by the necessities of war. It is our unanimous desire that the armies of the civilized nations be not simply provided with the most murderous and perfected weapons, but that they shall also be imbued with a notion of right, justice, and humanity, binding even in invaded territory and even in regard to the enemy.

The Brussels Declaration should be more than an international act. It should be an *act of education* which is to enter in future into the program of military instruction. Such should be the purpose of military instruction, and such should be the supreme object of our common efforts.

Permit me to add another observation. Let us suppose that we should not reach any understanding regarding the main articles of the Brussels Declaration. The result would be fatal and disastrous in the highest degree to the whole of our work, for then belligerent Governments and military leaders would say to themselves: " Twice, in 1874 and 1899, two great international Conferences have gathered together the most competent and eminent men of the civilized world on the subject. They have not succeeded in determining the laws and customs of war. They have separated, leaving utter vagueness for all these questions. These eminent men, in discussing these questions of the occupation and the rights and duties of invaded territories, have found no other solution than to leave everything in a state of vagueness and in the domain of the law of nations! How can we, the commanders in chief of the armies, who are in the heat of action, find time to settle these controversies, when they have been powerless to do so in time of peace, amid world-wide absolute calm and when the Governments had met for the purpose of laying down solid bases for a common life of peace and concord? "

Under these circumstances it would be impossible to deny to belligerents an unlimited right to interpret the laws of war to suit their fancy and convenience.

I wish to apologize, gentlemen, for having set forth my ideas at such length on this subject, but I did so because they spring from my most deep-seated convictions.

To leave uncertainty hovering over these questions would necessarily be to allow the interests of force to triumph over those of humanity. In calling your kind and serious attention to these considerations, I have, gentlemen, but one desire, namely: that you may fully realize the inevitable consequences which will arise from sacrificing the vital interests of peaceful, unarmed populations to the risk of reasons of war and the law of nations. These consequences will be fatal and disastrous in the highest degree, for the Hague Conference will then have shown to the public opinion of the civilized world once more the incapacity of the Governments to define the laws of war, for the sake of limiting its atrocities and cruelties.

It is for you, gentlemen, to judge of the deplorable effect this would have on the public opinion of the civilized world.

It is for you to answer the question: To whom will doubt and uncertainty be of advantage, to the weak or to the strong?

Mr. **Bihourd** remarks that two very different theses have been expressed on the subject of the first articles of the Brussels draft.

The speech of his Excellency Mr. **BEERNAERT** summarizes one and will be printed; as to the other, set forth in the pithy and eloquent response of the honorable **PRESIDENT**, it differs in some points from the preceding.

[93] It would be desirable to postpone until Thursday the discussion of these two theses in order that the subcommission may pass on them with a full knowledge of the subject.

This motion is adopted.

On an observation by Colonel **Gilinsky** it is decided that the speech of Mr. **MARTENS** shall be printed.

The meeting adjourns.

## SEVENTH MEETING

JUNE 8, 1899

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**Mr. Martens** presiding.

The minutes of the sixth meeting are read and adopted.

The **President** announces that an agreement has been reached between his Excellency **Mr. BEERNAERT** and General **MOUNIER**, as follows: the first two paragraphs of Article 55 are to be kept as now worded, while there is to be added thereto a third paragraph drawn up as follows:

Once the sick or wounded have been admitted into the neutral territory, they cannot be returned to any other than their original country.

Moreover, in order to state the spirit in which this solution of the question was reached, his Excellency **Mr. BEERNAERT** proposes that the following explanation, adopted by General **MOUNIER**, be inserted in the minutes:

This article has no other aim than to provide that humane and hygienic considerations may induce a neutral State to allow wounded or sick soldiers to pass across its territory without failing in its duties of neutrality.

It results from the text itself that the same stand would have to be taken in regard to both belligerent armies.

This form of wording is indorsed by his Excellency Count **Nigra**.

The subcommission approves the insertion of this explanation in the minutes and adopts the wording proposed for Article 55.

The discussion of Chapter I of the Brussels draft is now taken up, entitled "On military authority over the territory of the hostile State."

Article 1 is read:

Territory is considered occupied when it is actually placed under the authority of the hostile army.

The occupation extends only to the territory where such authority has been established and can be exercised.

Colonel **Gross von Schwarzhoff** asks that the second paragraph be stricken out.

He thinks it is necessary to provide for the case in which a belligerent has effectively established his authority in a territory, but in which communications between the army or the occupying bodies and the other forces of the belligerent are interrupted and in which uprisings occur in that territory and are momentarily successful.

General **den Beer Poortugael** says that this amendment has too extensive a



scope. An occupation can be recognized only when the authority of the belligerent is actually established.

Colonel **Gross von Schwarzhoff** remarks that the word "actually" occurs already in the first paragraph.

His Excellency Mr. **Beernaert** is of opinion that the first paragraph is only explained in the second, and that standing alone it would be meaningless.

[94] Chevalier **Descamps** observes that the Institute of International Law went further than the Brussels Conference and placed more restrictions on the notion of occupation. He reads Article 41 of the Oxford Manual containing the definition of "occupied territory."<sup>1</sup>

He thinks that the omission of paragraph 2 would be contrary to all established ideas. It is impossible to recognize an occupation which does not exist. What must be absolutely preserved is the notion of occupation.

Colonel **Gilinsky** emphasizes the military standpoint: an army considers a territory occupied when it finds itself therein either with the bulk of its troops or with detachments, and when the lines of communication are insured. On this territory the occupying army leaves troops to protect its communications in the rear. These troops are often not very numerous, so that an uprising becomes possible. However, the fact of such an uprising breaking out does not prevent the occupation from being considered as actually existing. In order to take this military standpoint into account he reminds the high assembly of the explanation adopted in 1874 by the Brussels Conference at its meeting of August 12,<sup>2</sup> the text of which is as follows:

We may consider occupation as *established* when a *part* of the occupying army has secured its positions and its *line of communications* with the other bodies. This being done, it is in a position to cope with the army of the occupied country and the uprisings of the population.

His Excellency Mr. **Beernaert** remarks that at Brussels, after long discussions, nothing better was found than the wording of Article 1 as now before the assembly. In his opinion it should be preserved for want of a better.

The **President** says that note will be made in the minutes of the explanation given of the military standpoint by Colonel **GILINSKY**. His Excellency Mr. **Beernaert** considers this explanation only as a personal opinion of Mr. **GILINSKY**. As a matter of fact, it by no means appears from the proceedings of the Brussels Conference that it espoused the explanation cited. It is a question of a sentence of General **LEER**.

Colonel **Gross von Schwarzhoff** proposes, as a concession, to add the word "established" in the first paragraph to the word "authority."

His Excellency Mr. **Beernaert** considers that this proposal does not constitute a concession.

Colonel **Gross von Schwarzhoff** agrees with Colonel **GILINSKY**, and would like to have his personal explanation adopted by the subcommission.

<sup>1</sup> This article reads as follows: Territory is considered occupied when, as the consequence of invasion by hostile forces, the State to which it belongs has actually ceased to exercise its ordinary authority therein, and the invading State is alone in a position to maintain order there. The limits within which this state of affairs exists determine the extent and duration of the occupation.

<sup>2</sup> See *Actes de la Conférence de Bruxelles 1874*, p. 105.

Colonel **Gilinsky** declares that he would also like to have this done.

The **President** recommends to the attention of the subcommission this explanation given from the military standpoint.

General **den Beer Poortugael** remarks that the expression "has secured its positions, etc." is too vague. The principle involved seems to him clear and easy to state. When an authority has not power enough to maintain itself, it is not established and there is no occupation.

Mr. **Rolin** proposes a compromise text reproducing, with slight modifications, Article 41 of the Oxford Manual:

Territory is considered occupied by the enemy State when, as the consequence of invasion by hostile forces, the State to which this territory belongs has actually ceased to exercise its ordinary authority therein. The limits within which this state of affairs exists determine the extent and duration of the occupation.

Mr. **ROLIN** thinks that the double fact, easily verified, of the invasion of the territory and the retirement of the legal authorities, may serve best to determine whether there is occupation. In the case contemplated by the proposed text, there is necessarily an occupation by the enemy, since there is no longer more than one single authority that can be exercised, and that is the authority of the enemy.

His Excellency Mr. **Beernaert** persists in believing that the definition of 1874 is preferable. The retirement of the legal authorities is a negative event which may very easily occur without there being an occupation.

[95] Colonel **Gross von Schwarzhoff** thinks that he can endorse the proposition of Mr. **ROLIN**.

His Excellency Mr. **Beernaert** thinks that the change introduced by Mr. **ROLIN** in the Oxford text removes even the last guaranty which the latter afforded.

Jonkheer **van Karnebeek** observes that the draft proposed by Mr. **ROLIN** lacks precision. It seems to him that it is not in conformity with the first paragraph of Article 1. According to the text of Mr. **ROLIN**, the word "invasion" relates to the enemy State; whereas, as clearly indicated by the text of 1874, it is a question of invasion of the enemy *territory*.

Mr. **Rolin**, in order to avoid the ambiguity pointed out by Mr. **VAN KARNEBEEK**, eliminates the words "by the enemy State" after the word "occupied" in his amendment.

Chevalier **Descamps** observes that, according to Mr. **ROLIN**'s wording, there might be occupation without the territory's being really occupied.

Mr. **Stancioff** remarks that in case of occupation, the enemy ought to warn the inhabitants of the country of his occupation of the conquered ground.

Mr. **Léon Bourgeois** states that all the propositions thus far made in regard to Article 1 relate only to its details and not to its general idea. Colonel **GILINSKY**, for instance, speaks only of defending communications; now, it is likewise a question of positions. Mr. **ROLIN** also confines himself to defining a particular case, viz., "the retirement of the legal authorities," without clearly stating what authorities are referred to. Could it be said that the legal authorities have withdrawn when only the mayors continue to exercise authority? It would seem to him more prudent to preserve the wording adopted in 1874 after mature deliberations by all the representatives of the different Powers. It would not be

desirable to give Article 1, the pinnacle, as it were, of our work, a new, hastily prepared, and certainly incomplete definition which might give rise to serious difficulties of interpretation.

Mr. **Rolin** wishes to define the conditions under which he formulated his proposition.

In view of the two opinions, one of which is that the whole article ought to be maintained, and the other that the second paragraph should be dropped, he endeavored to find a compromise solution. In case it should be decided to maintain the entire article, he withdraws his proposal.

Mr. **Lammasch** proposes the following wording: "Territory is considered occupied in so far as it is actually placed under the established authority of the hostile army."

Chevalier **Descamps** thinks that this wording does nothing but introduce the original text of Article 1 in another form. Under these circumstances it would be better to keep the original text.

Mr. **Lammasch** would be satisfied if Article 1 were preserved as now worded; his proposal was only made for reconciliation.

The **President** thinks he ought to recall the fact that, as Mr. **BOURGEOIS** said, this article was the result of thorough deliberations at the time of the Brussels Conference. After four meetings, the military men, diplomats, and jurists agreed that this wording was the best. This circumstance must be taken into account.

Colonel **Gilinsky** observes that he made no motion. He wished merely to support the opinion expressed by Colonel **GROSS VON SCHWARZHOFF** by pointing out the difference between the idea as viewed from the military standpoint and as viewed from the legal standpoint.

Colonel **GILINSKY** declares that he is not opposed to maintaining Article 1.

Colonel **Gross von Schwarzhoff** declares that, in view of the general opinion in favor of maintaining the article, he no longer insists on the omission of paragraph 2.

Article 1 is unanimously adopted as worded in 1874.

Article 2 is read:

The authority of the legitimate Power being suspended and having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore and ensure, as far as possible, public order and safety.

His Excellency Mr. **Beernaert** proposes to strike out the words "being suspended and."

This proposition and the article thus amended are adopted.

Article 3 is read:

With this object he shall maintain the laws which were in force in the country in time of peace, and shall not modify, suspend or replace them unless necessary.

The **President** recalls that his Excellency Mr. **BEERNAERT** has proposed that Article 3 be omitted as superfluous.

General **den Beer Poortugael** supports this view of his Excellency Mr. **BEERNAERT**.

The **President** admits that Article 3 is contained in part in Article 2.

[96] Mr. **Lammasch** deems that the article nevertheless has a certain value,

especially as far as weak States are concerned and by reason of the restriction introduced by the words "unless necessary." He is in favor of keeping the article.

Baron **Bildt** is of opinion that it is necessary to adopt the principle of avoiding as far as possible any modifications of the text adopted at Brussels. The article is humanitarian and there is no reason for abolishing it. From this standpoint, and not having yet heard any clear and decisive argument in favor of omitting the article, he is of opinion that it ought to be maintained.

His Excellency Mr. **Beernaert** objects that it is impossible to attribute certain powers in advance to the victor over the territory of the defeated by means of a convention; on the other hand, the proposed provision affords only an apparent guaranty since the invader will have the privilege of modifying, extending and superseding the existing laws, in other words, he will do as he pleases.

Baron **Bildt** is rather inclined to side with Mr. **Martens** who, in his eloquent speech, showed plainly how advantageous it is to the weak and the conquered to find the obligations of the victor limited and circumscribed. Doubt and uncertainty can be of advantage only to the strong. The article presents this advantage, that while it allows the victor to be the judge, it requires that there should be a *necessity* to take the measures in question. It must, however, be admitted that the question here is rather one of a moral obligation.

Mr. **Stancioff** says that at all events it will be necessary to add the restricting word "imperious" to the too vague word "necessity."

General **Zuccari** remarks that as the different amendments of his Excellency Mr. **Beernaert** form an aggregate, it would be better to suspend the vote until each of them has been discussed separately.

Mr. **Beldiman** asks to make an observation regarding the order of discussion similar to that made by General **Zuccari**. The propositions of his Excellency Mr. **Beernaert** constitute an aggregate. It is impossible to vote for the abolition of *one* article without first agreeing as to the principle which dominates them *all*. Otherwise, a premature judgment would be formed as to the decision affecting the propositions as a whole. In treating one of them it is necessary to keep the others in mind. Accordingly, he proposes that the vote be postponed.

Mr. **Motono** does not think that there is such a connection between the articles to which the amendments of his Excellency Mr. **Beernaert** relate as would render it impossible to reach a decision on each of them separately.

The **President**, in agreement with his Excellency Mr. **Beernaert**, thinks that the articles ought to be discussed successively, as a deliberation and vote on them as a whole would become too complicated.

Mr. **Léon Bourgeois** states that, inasmuch as a discussion on Articles 3, 4, and 5 as a whole would on the one hand be too difficult, and since on the other hand a common principle dominates them all, the votes given separately on each of them ought to be considered as *tentative*. It is necessary to allow a second discussion as a preparation for a confirming vote.

This mode of proceeding is approved.

Mr. **Odier** wishes to explain in what sense he will be able to agree with the proposal of his Excellency Mr. **Beernaert** to eliminate Articles 3, 4 and 5. While adhering to the humane principle which influenced the drafting of these articles, and while hoping that the occupying authority may be exercised in the most moderate manner, he deems it impossible to ask the conquered State to sub-

scribe in advance, by means of a convention, to measures which might be vexing to the populations; it is also impossible to delegate, so to speak, to the occupant the powers which the *de jure* State has been forced to relinquish. It is for this fundamental reason that Mr. ODIER is able to declare himself in accord with the proposal to eliminate the articles indicated by his Excellency Mr. BEERNAERT, but on condition, however, that it be stated in the minutes that, if this subject could be regulated by means of texts of conventions the spirit in which they should be adopted as articles or conventions ought to be the one which prevailed during the drafting of these provisions.

His Excellency Mr. **Eyschen** states the grounds of his vote. He will vote in favor of the omission proposed by his Excellency Mr. BEERNAERT, but he wishes to point out that in his opinion the duties of economic, legislative and military guardianship which devolve upon the occupant ought to be construed in the sense of the Brussels Declaration.

He desires that his declaration be inserted in the minutes.

His Excellency Mr. **Beernaert** says that he agrees with the declaration of Mr. ODIER and of his Excellency Mr. EYSCHEN.

The **President** has a vote taken.

The following voted to eliminate Article 3: United States, Belgium, China, Spain, Luxemburg, Netherlands, Persia, Russia, Siam and Switzerland.

[97] The following voted to maintain Article 3: Germany, Austria-Hungary, Denmark, France, Great Britain, Italy, Japan, Mexico, Portugal, Serbia, Sweden and Norway, Turkey and Bulgaria.

Roumania reserves its vote.

It is understood that this vote, like those on the two following articles, will be considered tentative, as Mr. BOURGEOIS mentioned upon voting.

Article 3 is therefore tentatively maintained by a vote of 13 to 10, with one abstention.

The **PRESIDENT** puts to vote the proposition of his Excellency Mr. BEERNAERT to eliminate Article 4 worded as follows:

The functionaries and employees of every class who consent on his invitation to continue their functions shall enjoy his protection. They shall not be dismissed or subjected to disciplinary punishment unless they fail in fulfilling the obligations undertaken by them, and they shall not be prosecuted unless they betray their trust.

The following voted to eliminate Article 4: United States, Belgium, China, Spain, France, Italy, Luxemburg, Mexico, Netherlands, Persia, Portugal, Russia, Siam, Switzerland and Bulgaria.

The following voted to maintain Article 4: Germany, Austria-Hungary, Denmark, Great Britain, Japan, Serbia and Sweden and Norway.

Roumania and Turkey refrained from voting.

Article 4 is therefore tentatively eliminated by a vote of 15 to 7, with two abstentions.

Messrs. **Bourgeois** and **Zenil** explained their votes by saying that in their opinion Article 4 is not of the same nature as Article 3.

The **President** finally puts to vote the elimination of Article 5, proposed likewise by his Excellency Mr. BEERNAERT:

The army of occupation shall only collect the taxes, dues, duties and

tolls imposed for the benefit of the State, or their equivalent, if it is impossible to collect them, and, as far as possible, in accordance with the existing forms and practice. It shall devote them to defraying the expenses of the administration of the country to the same extent as the legitimate Government was so obligated.

The following voted to eliminate Article 5: United States, Belgium, China, Spain, France, Luxemburg, Persia, Russia, Siam, Switzerland and Bulgaria.

The following voted to maintain Article 5: Germany, Austria-Hungary, Denmark, Great Britain, Italy, Japan, Mexico, Netherlands, Portugal, Serbia and Sweden and Norway.

Roumania and Turkey reserved their vote.

Eleven votes were therefore cast in favor of maintaining Article 5 and eleven against, two votes being reserved.

His Excellency Mr. **Beernaert** says that as his propositions regarding the elimination of Articles 40 to 42 and the introduction of new additional articles are but the development of the principle on which are based his propositions in regard to Articles 3, 4, and 5, it would perhaps be preferable to vote also tentatively on the latter.

The wording of Article 3, which was tentatively maintained, is now taken up.

Mr. **Odier** proposes the following wording:

With this object he shall maintain the laws which were in force in the country in time of peace. He may only suspend their enforcement to the extent and for the time that may be necessary for the purpose of maintaining order.

Colonel **Gross von Schwarzhoff** thinks it will be very difficult for military men to accept this wording.

Mr. **Rolin**, giving due regard to the observations made by his Excellency Mr. **BEERNAERT** at the preceding meeting, is of opinion that the right of the victor should not be recognized by convention in advance. The idea which predominates in these articles is to set limits which the victor shall not exceed, except in case of the necessities of war. It is not a question here of stipulating what the victor is authorized to do, but what he ought to be prohibited doing. For this reason he proposes to draft the article as follows:

The existing laws remain in force in the occupied territory, and if the occupant is induced, owing to the necessities of war, to modify, suspend, or replace them, the effect of these measures shall be limited to the extent and duration of the occupation.

Mr. **Lammasch**, although agreeing fundamentally with Mr. **ROLIN**, regrets that he is unable to fully endorse his proposition. He is afraid that this wording might be construed as meaning that the effect of the acts committed by virtue of the occupation should be limited to the period of the occupation; it seems to him, on the contrary, that these acts are governed by the laws which were in [98] force during this time and that thus, by modifying the adage "*locus regit actum*" so as to read "*tempus regit actum*," the same laws will continue to govern these acts after the occupation has ceased.

Mr. **LAMMASCH** states that the wording suggested by Mr. **ROLIN** might be construed in a manner contrary to this principle.

Mr. **Rolin** thinks that it will be possible for him to do justice to the observation of Mr. **LAMMASCH** by very slightly modifying the wording which he proposed.

The **President** remarks that Article 3 is the result of thorough discussion. If it is desired to find a wording which will provide for all cases, one might deliberate a very long time. Expressing his personal opinion, he thinks it would be desirable to adopt this article in its original text.

At the request of Colonel **Gilinsky** note is taken of the fact that, as a technical delegate, he has defended the military laws and the necessities of war at this meeting. Owing to these considerations of a military nature, the laws of the occupied country can only be upheld in so far as they are not in contradiction with the military laws of the invader.

The declaration of Colonel **GILINSKY** will be inserted in the minutes.

His Excellency Mr. **Beernaert** and Mr. **Bourgeois** ask that the vote be postponed until the next meeting.

The **President** agrees to this and asks the delegates who have proposals to make regarding Chapters I, II and IX as a whole, to send them in writing to-day to the Bureau so that they may be distributed and examined before the next meeting.

The meeting adjourns.

## EIGHTH MEETING

JUNE 10, 1899

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Mr. Martens presiding.

The minutes of the seventh meeting are read and adopted.

General Sir John Ardagh reads the following declaration:

In the speech delivered by his Excellency Mr. BEERNAERT at the sixth meeting, I believe that I discern a conviction or at least a desire that the revision of the Brussels Declaration should end in an international convention, and our PRESIDENT in his statement expressed the wish that this declaration might be more than an international act.

Without seeking to ascertain the motives to which may be attributed the non-adoption of the Declaration of 1874, it is permissible to suppose that the same difficulties may arise at the conclusion of our labors at The Hague.

In order to brush them aside and to avoid the unfruitful results of the last Conference, it seems to me that we had better accept the Declaration only as a general basis for instructions on the laws and customs of war to be given our troops, without any pledge to accept all the articles as voted by the majority.

I believe that my Government is willing to adopt this idea instead of absolutely abstaining according to the communication given to the Imperial Government at the end of the Brussels Conference by Lord DERBY.

Our intention is to embody in our manual of instruction, literally, if possible, all the articles of the Declaration which we deem to be in conformity with the principles of international law in accordance with which we have thus far regulated our acts.

With this reservation we desire that the Conference should pass upon the largest possible number of questions in order to show the opinion of every one one way or the other. It seems to us that the entire elimination of certain articles, as proposed by his Excellency Mr. BEERNAERT, might be considered as an authorization to the belligerents to interpret the laws of war in a way unfavorable to weak States, whereas a full discussion would at least indicate certain restrictions on the unlimited right arising from uncertainty; and, whatever the result may be, it would not bind us to accept the articles.

This full liberty to accept or modify the articles is of supreme importance to us.

In pursuing this line of ideas, we see not only a possibility but also a certainty of insuring to the labors of the two Conferences a serious result, and we believe that we shall be avoiding the risk of failure presented by a project for an international convention or by the adoption of identical instructions for all armies.

At all events, my Government will not be bound by my opinion or my vote and will remain absolutely free.



The President then took the floor as follows:

I deem it my duty to repeat what I have already said on several occasions, both in this assembly and elsewhere. The object of the Imperial Government has steadily been the same, namely, that the Brussels Declaration, revised as far as this Conference may deem necessary, shall form a solid basis for the instructions which the Governments will give to their land armies in case of war. Of course, in order that this basis may be firmly established, an international agreement is necessary similar to that embodied in the St. Petersburg Declaration of 1868. It would be suitable if the signatory and acceding Powers would declare in an article that they are agreed on certain uniform rules which would constitute the subject of these instructions. This is the only way to secure an obligation binding on the signatory Powers. It is well understood that the Brussels Declaration will have this binding force only as far as the contracting or acceding States are concerned.

If, however, in a future war an ally of one of these Powers should not have signed this pledge to wage what would have been called a "fair" war in the middle ages, the rules of the Brussels Declaration would not be applicable to that ally. He would obviously be entitled to give such instructions as he might deem useful and just and he might for this purpose choose from among the doctrines professed by the different jurisconsults who have dealt with the subject.

However, those instructions would lack a solid, uniform, and recognized basis.

In order to clearly explain what the purpose of the Conference is in regard to this subject in the opinion of the Russian Government, I can find no better illustration than a "mutual insurance association against the *abuses* of force in time of war." Now, gentlemen, one is free to join an association or not, but in order that it may exist it must have by-laws. And in insurance companies, for instance those against fire, hail, or other calamities, the by-laws which provide for these disasters do not regulate, but recognize the existing dangers. Thus it is that in organizing by common consent "the mutual insurance association against the abuses of force in time of war" for the purpose of safeguarding the interests of populations against great disasters, we do not legalize those disasters but simply recognize them. On the other hand, it is not against the necessities of war, but solely, I repeat, gentlemen, against the *abuses* of force that we wish to be guaranteed.

In proposing to the nations of the civilized world to found such a society, Russia not only expressed a desire but thought that she was obeying a duty. It seems to me that the whole world cannot help sharing this view. It is for the Governments to enter the society or not, to accept or reject the hand extended to them. However, only the members will benefit by all the advantages which will be offered by this society in time of war.

As regards the by-laws of the society, they can be none other than the Declaration of Brussels, modified by your deliberations. But do not lose sight of the fact that none of its articles sanctions the disasters of war which do and always will exist. What the provisions have in view is to bear relief to peaceable and unarmed populations during the calamities of war.

Here, gentlemen, is the standpoint once more explained which in my opinion ought to dominate our common efforts.

I hope that the result of them will be to form a society such as that whose mission and purpose I have set forth to you.

At the proposition of Messrs. **Motono** and **Bille** it is decided that the declaration of Sir **JOHN ARDAGH** and the explanation of Mr. **MARTENS** shall be printed and appended to the summary account.

Mr. **Veljkovitch** observes that in his opinion the subcommission is competent only to examine the draft Declaration of Brussels. It will be for the plenary conference to decide whether the results of these labors are to be given the form of a convention.

The **President** remarks that there is no reason for entering into a discussion of the declaration of Sir **JOHN ARDAGH**.

At the end of the deliberations the Governments will have to decide as to the suitability of concluding a convention on this subject.

General Sir **John Ardagh** says that his declaration is personal in character and does not come from his Government.

His Excellency Count **Nigra** says that it would be important to know whether the English Government shares the view of Sir **JOHN ARDAGH**.

His Excellency Sir **Julian Pauncefoot** declares that it is a question here of a personal opinion in regard to which the British Government will be consulted and reach a decision in due time and place.

His Excellency Mr. **Beernaert** thinks that he misunderstood Sir **JOHN ARDAGH**. He highly appreciates the humanitarian purpose had in view by the Russian Government and states that an agreement has already been reached on many points and often with the concurrence of the English delegate. However, in the very interests of the cause, he deemed it his duty to point out the difficulties which would be encountered by an attempt to solve certain questions by means of a convention. Nevertheless, he endorsed the proposition of Mr. **ODIER** to insert in the minutes as a recommendation that which could not be embodied in a convention, even in necessarily vague terms. If it is desired only to impose restrictions upon the victor, it may be done in this manner. He has, moreover, described the situation of Belgium, which is permanently neutral and consequently very much disinterested in law in the question of belligerents.

The **President** says that note will be taken of the declarations of Sir **JOHN ARDAGH** and his Excellency Mr. **BEERNAERT**.

He announces:

1. That Mr. **ODIER** has proposed the following wording for Article 3:

With this object he shall maintain the laws which were in force in the country in time of peace. He may only suspend their enforcement to the extent and for the time that may be necessary for the purpose of maintaining order.

2. That Mr. **ROLIN** has proposed the following amendment to Article 3:<sup>1</sup>

The existing laws remain in force in the occupied territory, and if the occupant is induced, owing to the necessities of the war, to modify, suspend, or replace them, these measures shall be only of a purely provisional character, limited according to the extent and duration of the occupation.

The **PRESIDENT** asks the delegates who have proposed amendments in regard to Article 3, the maintenance of which has been provisionally adopted, to kindly give explanations regarding their propositions.

<sup>1</sup> See annex A.

Mr. **Rolin** recalls that the first draft of his amendment has been distributed. It was couched in the following terms:

The existing laws remain in force in the occupied territory, and if the occupant is induced, owing to the necessities of war, to modify, suspend, or replace them, the effect of these measures shall be limited to the extent and duration of the occupation.

To take into account the remarks of Mr. **LAMMASCH** at the close of the previous meeting, the end of the article was changed in the text now submitted to the subcommission. Apart from this explanation, Mr. **ROLIN** has nothing to add to what he said in the meeting of June 8 in support of his amendment to Article 3.

Mr. **Odier** recalls the fact that he favored the abolition of Article 3 and that he had proposed his wording in case it should be decided to maintain this article. He would like to have the text of the article in question submitted to a preliminary vote, whereupon a vote could be taken on the question of its maintenance.

Baron **Bildt** proposed the following amendment, the text of which is distributed during the meeting: Omit from Article 3 the words "and shall not modify, suspend, or replace them unless necessary"; and from Article 5, the words "as far as is possible."

Baron **BILDT** observes that opinions were divided at the last meeting. On the one hand guaranties were desired; on the other, objections were made to defining the limits of the rights of the victor, for by this act the Governments would be recognizing the belligerents in advance as having rights over their subjects.

It was from this standpoint that his Excellency Mr. **BEERNAERT** asked [101] that the article be abolished. The speaker expressed an opinion to the contrary, but in order to attain a real result, he proposed his amendment, which consequently is in the nature of a compromise. He hopes to receive the consent of all, unanimity being very desirable for the resolutions of this subcommission. Personally, he would not be opposed to maintaining the article.

Colonel **Gross von Schwarzhoff** remarks that it seems inadmissible to him to omit the last words of the article, which, without this restriction, forbids making any change whatever in the state of affairs in the invaded territory. The occupant would not even be allowed to declare martial law and would have for instance to respect the laws on recruiting, etc. In his personal opinion, the acceptance either of the amendment of Mr. **ODIER** or that of Baron **BILDT** gives rise to many obstacles to the ratification of this act, not only on the part of Germany but elsewhere.

Mr. **Bihourd**, in order to bring together the different opinions as far as possible on this humane provision, proposes to omit Article 3 but to preserve its spirit by adding the following phrase to Article 2: "while respecting unless absolutely prevented the laws in force in the country."

His Excellency Mr. **Beernaert** endorses this proposition.

Baron **Bildt** and Messrs. **Odier** and **Rolin** endorse the amendment of Mr. **BIHOURD**.

On motion of Jonkheer **van Karnebeek** a vote is first taken on this amendment, the decision on this subject implying likewise that regarding the maintenance or abolition of Article 3.

The amendment of Mr. **BIHOURD** is adopted by 23 votes against 1 (Japan).

Mr. **Motono** explains that he voted against the amendment for the following reason: The phrase added to Article 2 has in view only laws relating to public order and safety, whereas Article 3 seems to him to be more general in scope.

Mr. **Beldiman**, having made an appeal to the Japanese delegate in order to secure the desired unanimity, Mr. **Motono** modified his negative vote after some explanations had been made by Messrs. **BELDIMAN** and **BOURGEOIS** regarding the purport of the phrase added to Article 2 by Mr. **BIHOURD**.

The amendment of Mr. **BIHOURD** is therefore unanimously adopted by twenty-four votes, the delegate from Greece not being present.

The **President** thanks Mr. **MOTONO** for the spirit of conciliation which he was pleased to show.

The discussion of Article 4 of the Brussels draft is now taken up:

The functionaries and employees of every class who consent, on his invitation, to continue their functions, shall enjoy his protection. They shall not be dismissed or subjected to disciplinary punishment unless they fail in fulfilling the obligations undertaken by them, and they shall not be prosecuted unless they betray their trust.

Captain **Crozier** declares that, although he tentatively voted to abolish Article 4, inasmuch as this provision is of no use to his country because it runs no risk of being invaded, he will nevertheless now express himself in favor of maintaining Article 4, since the spirit thereof has been preserved by the vote just taken.

His Excellency Mr. **Beernaert** points out that it is impossible for a State to authorize its officials in advance to pass into the service of its adversary.

Jonkheer **van Karnebeek** says that in his opinion the substance of the provision is not that a right is given to the invader; restrictions are rather placed on his actual authority. However, he sees something else in the article: not an "authorization" but a sort of "invitation," which he would never like to see inserted in a convention. In many cases it would be a patriotic duty of the highest importance to remain to the end the most determined and resolute opponents and enemies of the invader.

For this reason he sees a difference between Article 4 and the other articles which it is proposed to abolish. As far as he is concerned, he asks that Article 4 be dropped.

Mr. **Lammasch** asks whether it would not be possible to maintain it with a slight modification of the text by adopting the conditional form which Mr. **ROLIN** used in drafting Articles 5 and 5 *a* proposed by him.

His Excellency Mr. **Beernaert** remarks that, even with the wording proposed by Mr. **LAMMASCH**, the authorization would still exist.

Mr. **Lammasch** thinks then that the words "with the consent of their country" should be added.

His Excellency Mr. **Beernaert** says that in this way the article would lose its reason for existence.

Colonel **Gross von Schwarzhoff** says that it is not a question here of political functionaries alone, but also of those of all other categories, including those elected by the inhabitants. The inhabitants have a right to have the mayors and municipal employees remain in their places.

Moreover, it is in the interest of the occupant himself to retain some of [102] these functionaries. It is not solely a question of permission to remain in the service of the enemy, but the presence of certain functionaries is in the interest of both parties.

Mr. **Rolin** having been unable to find any form of wording, taking all the objections into account, supports the proposal to abolish the article. The wording suggested by Mr. **LAMMASCH** also presents a danger, since it appears to stipulate that the functionaries may not remain at their posts without the consent of their Government.

It is necessary to take into account the interests of the populations, which require that the local and municipal functionaries shall be present in order to defend the rights and property of the populations as far as possible against the demands of the invader.

In acting thus the functionaries not only do not fail in their duties, but from a certain standpoint it may even be said that they fulfill an obligation towards their own country. It would therefore be dangerous to adopt a form of wording which might be construed to mean that the functionaries could not remain at their posts without having received permission from their own country.

The **President** observes that all these questions were discussed at length in 1874. Not only were the necessities of war kept in view, but experience was also taken as a basis, in the desire to safeguard the interests of the populations as much as possible.

If the enemy does not find any functionary at hand, he has no means of being equitable and just, and it is by virtue of the mandate of their own country that the functionaries are the natural defenders and protectors of the inhabitants in their relations with the occupant.

Recognizing the difficulties raised by this article, Mr. **MARTENS** consents to the proposal to abolish it.

**Jonkheer van Karnebeek** understands perfectly well how important it is to find mayors and other local authorities ready to place themselves at the disposal of the occupying enemy and to protect the population at the same time. However, there are other authorities whose functions are very important, notably in the Netherlands. These are the authorities in charge of the administration of dikes, of rivers, and of the movement of waters. In case of occupation their co-operation might be indispensable to the defense of the country. To the enemy the assistance of these authorities, who alone know the movement of the waters, would be of the highest importance, but if they were to enter his service this might constitute an act of treason at a time when it is a question of the defense of the country. For this special reason, he can never give his consent to the maintenance of Article 4.

Mr. **Veljkovitch** remarks that the question is already decided by Article 2. Respect for the laws which exist in the country implies the retention of the functionaries appointed by virtue of those laws.

The **President** says that the judicious interpretation of Mr. **VELJKOVITCH** shall be inserted in the minutes.

Article 4 is unanimously omitted.

Article 5 is read :

The army of occupation shall only collect the taxes, dues, duties and tolls imposed for the benefit of the State, or their equivalent, if it is impossible to collect them, and, as far as is possible, in accordance with the existing forms and practice. It shall devote them to defraying the expenses of the administration of the country to the same extent as the legitimate Government was so obligated.

The **President** says that Mr. **ROLIN** proposed the following new wordings:

If the occupant collects the taxes for his own benefit, he thereby incurs the obligation to defray the expenses of the administration of the occupied territory to the same extent as the legitimate Government was so bound.

His Excellency Mr. **Beernaert** asks that this article be examined at the same time as Articles 40 to 42, because in his opinion there is a connection between them.

Mr. **Rolin** thinks that Article 5, dealing with existing taxes, sets forth a different principle from that of the articles relating to extraordinary contributions, requisitions, and other charges collected by the occupant.

Jonkheer **van Karnebeek** observes that the wording proposed by Mr. **ROLIN** is not preferable to the original text, since it does not specify what taxes are referred to and is less favorable to the invaded country. Therefore, it seems preferable to him from a general standpoint that the text adopted at Brussels should be maintained.

Mr. **Rolin** points out that by his wording he tried to remove the scruples of which his Excellency Mr. **BEERNAERT** made mention. He does not disapprove the Brussels text in itself.

His Excellency Mr. **Beernaert** says that the words "already imposed" should at least be introduced into the proposition of Mr. **ROLIN**.

[103] Mr. **Bihourd** says that it is also proper to respect existing forms and usages as regards the collection of the taxes. The wording of Mr. **ROLIN** seems to him too vague.

Mr. **Rolin** answers that, since there is here merely a substitution of the authority of the occupant for the legal authority, it would have been sufficient, in his opinion, to say "collects the taxes," which comprises only the existing taxes in their various modes of collection.

Jonkheer **van Karnebeek** says that in the original text of 1874 he does not see the recognition of a right but only a restriction on the actual power of the invader. The Brussels text which he interprets in this way is more restricted and therefore in his opinion preferable.

Mr. **Veljkovitch** observes that the enumeration is not complete. Municipal contributions are not comprised therein. He proposes to add "or any other contributions already imposed," and to omit "for the benefit of the State."

The **President** recalls Article 8, which declares that the property of municipalities shall be treated as private property.

Jonkheer **van Karnebeek** remarks that as the fundamental purport of this article is that the authority of the occupant is substituted for that of the invaded State, it cannot be admitted that the occupant, by assuming a right which the occupied State does not possess, may take possession of the municipal taxes, which the invaded State itself would not think of appropriating in normal circumstances.

Mr. **Veljkovitch** remarks that in this eventuality the municipal authorities, being no longer able to discharge their duties, can likewise not collect the municipal taxes and especially the county rate; it is therefore proper for the occupant, whose power is substituted for that of the authorities, to take possession of the said taxes.

Mr. **Rolin** proposes the following wording, in which he has introduced some modifications, after an exchange of views participated in by his Excellency Mr. **Beernaert** and Messrs. **Bihourd** and **Beldiman**:

If the occupant collects the taxes imposed for the benefit of the State, he shall do so as far as is possible in accordance with the rules of assessment and incidence in force in the territory occupied, and shall in consequence be bound to defray the expenses of the administration of the occupied territory to the same extent as the legitimate Government was so bound.

The **President** observes that it would be desirable to vote first on the complete abolition of the article, then on the Brussels text, and then on Mr. ROLIN's text as amended following the remarks of Messrs. BIHOUD and BEERNAERT. It seems to him that the original text of Article 5 safeguards the interests of the populations better.

Mr. **Beldiman** is of the opinion that the proposition of Mr. ROLIN should first be voted on as being in the nature of a compromise between those who ask for the maintenance of Article 5 and those who ask for its abolition.

Jonkheer **van Karnebeek** thinks it would not be logical to vote for the abolition of the article first. It ought to be decided first what is to be substituted in its stead. If a majority cannot be secured in favor of any new text, it will be proper to vote for the abolition of the article.

It must, however, be remarked that there is but a slight difference between the wording of Mr. Rolin and that of 1874. It is very certain that this assembly wishes to meet the objections formed by his Excellency Mr. BEERNAERT, but perhaps the latter, in order to prevent a confusion in the discussion and the vote, would be willing on his part to make a concession by supporting the original wording of 1874. Of course this would be done with the understanding that the article should be construed as meaning that the invader should not be recognized therein as having any rights.

His Excellency Mr. **Beernaert** has already expressed his desire to have a perfect agreement reached. However, he could not vote *ad referendum* in the sense desired by Mr. VAN KARNEBEEK.

The **President** puts to vote the complete abolition of Article 5 with the understanding that no other provision is to be substituted therefor.

The following voted against this abolition: Germany, United States, Austria-Hungary, China, Denmark, France, Great Britain, Italy, Japan, Luxemburg, Mexico, Netherlands, Portugal, Roumania, Russia, Serbia, Sweden and Norway, and Turkey.

The following voted for the abolition: Belgium, under reservation of what may be substituted for the article submitted to vote, Spain, Persia, Siam (with the same reservation as made by the delegate from Belgium), Switzerland, and Bulgaria.

[104] Jonkheer **van Karnebeek** asks his Excellency Mr. BEERNAERT whether he could not, with a view to securing unanimity, agree to the text of Mr. ROLIN.

Unanimity would be well worth a concession. On his part, although preferring that the text of 1874 should be maintained, he would consent to adopt Mr. ROLIN's wording.

Baron **Bildt** declares that he shares the view of Mr. VAN KARNEBEEK.

His Excellency Mr. **Beernaert** says that he cannot vote for this wording *ad referendum*, but that he will recommend its adoption to his Government.

Mr. ROLIN's wording is unanimously adopted.

The meeting adjourns.

# NINTH MEETING

JUNE 12, 1899

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**Mr. Martens** presiding.

The minutes of the eighth meeting are read and adopted.

The **President**, with a view to facilitating the work of the subcommission, proposes:

1. To have printed without comments the text of all the articles adopted thus far.

2. To appoint a drafting committee composed of Colonel GROSS VON SCHWARZHOFF, Messrs. LAMMASCH and RENAULT, Colonel GILINSKY, Colonel A COURT, General ZUCCARI, and Mr. BELDIMAN, with Mr. ROLIN as reporter. The **PRESIDENT** will be present at the labors of the committee, whose mission will be the correction and final drafting of the adopted text. The members of the subcommission will, after receiving this text, kindly communicate to the drafting committee their observations or questions. This procedure will enable them to arrive at the final text, as appearing from the minutes and as it may serve for the second reading.

General **Zuccari** asks that the old and new texts be printed opposite one another.

The two propositions of the **PRESIDENT** are adopted.

The order of the day embodies a discussion of Articles 6 to 8.

Before opening the deliberations, the **President** suggests a modification in the order of the Articles. Article 5, setting forth fundamentally the rights and duties of the occupying State, was adopted with a happy unanimity. Articles 6 and following deal with the rights and duties of the occupant with respect to private property, railroads and the civilian population. Now, Articles 36 to 39, which have already been adopted, relate to similar subjects. There would therefore be an advantage in placing Articles 36 to 39 in Chapter I after Article 5. The subcommission formulated not only the rights, but also the duties of the occupant in regard to private property, peaceful persons, and families. This is the place to determine the restrictions to be placed on the principle of respect for private property by means of contributions and requisitions.

Accordingly there is no reason for discussing again Articles 36 to 39, which have already been adopted. Articles 40 to 42 might be taken up, to be then followed by Articles 6 and 7, which treat of the material interests of the occupied State. It will be seen what distinction is to be established between private property which is inviolable on land and the property of the State. Articles 9 to 11, which will remain to be examined, concern the combatants, their rights and their duties.



Mr. **Bihourd** is of opinion that the proposal of the **PRESIDENT** is worthy of approval. But he thinks that the drafting committee ought to be assigned the task of finding the final logical order of the articles.

The subcommission shares this view.

Articles 40, 41 and 42 are now read:

#### ARTICLE 40

As private property should be respected, the enemy will demand from communes or inhabitants only such payments and services as are connected with the generally [105] recognized necessities of war, in proportion to the resources of the country, and not implying, with regard to the inhabitants, the obligation of taking part in operations of war against their country.

#### ARTICLE 41

The enemy in levying contributions, whether as an equivalent for taxes (see Article 5) or for payments that should be made in kind, or as fines, shall proceed, so far as possible, only in accordance with the rules for incidence and assessment in force in the territory occupied.

The civil authorities of the legitimate Government shall lend it their assistance if they have remained at their posts.

Contributions shall be imposed only on the order and on the responsibility of the commander in chief or the superior civil authority established by the enemy in the occupied territory.

For every contribution a receipt shall be given to the person furnishing it.

#### ARTICLE 42

Requisitions shall be made only with the authorization of the commander in the territory occupied.

For every requisition indemnity shall be granted or a receipt delivered.

The **President** states that the following amendments are up for consideration:

1. His Excellency Mr. **BEERNAERT** desires to see these articles omitted and proposes two new articles thus worded:

A. The occupying army shall be allowed to collect taxes in the occupied territory only in accordance with the decision and under the responsibility either of the commander in chief or of the superior civil authorities instituted by him.

These taxes shall, as far as possible, be established in accordance with the rules of assessment and distribution in force in the occupied territories.

B. The occupying army shall be allowed to make requisitions in kind only on the written order of the officer commanding the occupied locality.

For every requisition a compensation shall be allowed or a receipt delivered.

2. Mr. **ROLIN**, reporter, has proposed an Article 5a to take the place of Article 41:<sup>1</sup>

If the occupant levies extraordinary contributions, either by way of fines, or as an equivalent for unpaid taxes or payments not furnished in kind, he shall proceed so far as possible only in accordance with the local rules governing incidence and assessment.

<sup>1</sup> See annex A.

Contributions shall be imposed only on the order and on the responsibility of the commander in chief or the superior civil authority established at the place.

For every contribution a receipt shall be given to the person furnishing it.

and an Article 5b proposed as a substitute for Articles 40 and 42:

Payments in kind and in general all requisitions levied against communes and inhabitants shall be commensurate with the generally recognized necessities of war, in proportion to the resources of the country, and of such a nature as not to imply the obligation on the part of the population to take part in operations of war against their country.

Requisitions shall be made only with the authorization of the commander in chief in the territory occupied.

Contributions in kind shall, as far as possible, be paid for in cash, and if not vouchers shall be given.

3. Finally, Lieutenant Colonel VON KHUEPACH proposed the following as paragraph 3 of Article 41: "Contributions shall not be levied except on the order and under the responsibility of the commander in chief of the troops occupying the territory or of the superior civilian authorities established by the enemy in this territory."

After paragraph 1 of Article 42, as a new paragraph: "In case of urgency and for the needs of daily existence of the troops, requisitions may be made with the authorization of their commanders."

Jonkheer van Karnebeek observed that in rereading the contents of these Articles 40, 41, and 42, he does not find the ideas to be expressed very clearly. It does not appear therefrom what system the Conference of 1874 wished to establish, and one cannot help recognizing a certain confusion of ideas in these texts. On the other hand, the resolution taken by this subcommission to give another wording to Article 5 has not improved the situation.

Mr. VAN KARNEBEEK would like to set forth the system to be adopted, and if it meets with approval, he will point out a new wording. The system which he recommends is as follows: In the matter of taxes, the belligerent [106] on the occupied territory shall collect only the taxes already existing and established by the invaded State. A clear statement must be made with regard to respect for private property, and the feeding of war by war should be prohibited, as well as the making the inhabitants pay the expenses of the war. Contributions of money should only be permitted as an equivalent for unpaid existing taxes, or else by way of fine. It must be recognized that an occupying army may find it necessary to impose fines.

As to requisitions in kind, the occupant ought to be enabled to make them. They are neither in the character of taxes nor fines, but arise from the necessity of affording the troops subsistence. But Mr. VAN KARNEBEEK deems it illogical to admit, as was done at Brussels, that they may be superseded by contributions in money.

For the furnishing of supplies in kind, either compensation must be allowed or receipts delivered.

This is the system to be adopted. It is easily arrived at if we utilize the existing texts, only in this case it will be proper to reverse the decision reached and preserve the former wording of Article 5.

The President observes that Article 40 becomes almost useless if preceded

by Articles 37 to 39, and that it might, if necessary, be omitted. As regards Articles 41 and 42, concerning requisitions and contributions, he believes that the new wording proposed by Mr. ROLIN in Articles 5a and 5b is superior to the Brussels text. The work of the subcommission would be facilitated if Articles 41 and 42 were taken out of the discussion and the propositions of Mr. ROLIN taken as a basis for the deliberation, they appearing to him to be plainer and less likely to give rise to misunderstandings.

Jonkheer van Karnebeek cannot entirely embrace this view. He agrees to omitting Article 40. As to the wording proposed by Mr. ROLIN for Articles 41 and 42, it springs from a system different from his. Mr. ROLIN wished to conciliate everybody and meet objections by changes of form. His objections relate to the substance and he suggests the following wording:

#### ARTICLE 41

The enemy shall levy contributions in money only as an equivalent for taxes as referred to in Article 5 or by way of fine, and as far as possible shall do this only in accordance with the local rules concerning the distribution and assessment of taxes.

The contributions shall be levied only on the order and under the responsibility of the commander in chief or of the superior civil authority established by the enemy in the occupied territory.

As to Article 42, relating to furnishing of supplies, Mr. ROLIN's text might be followed. The main question is whether the enemy is to be forbidden to levy contributions in money otherwise than as an equivalent for established taxes or by way of fine. The Brussels Declaration leaves the door open to other contributions intended solely for the purpose of raising money. Mr. VAN KARNEBEEK points out the necessity of reaching a solution on this capital point; otherwise big difficulties will arise in practice.

Colonel Gross von Schwarzhoff observes that Mr. VAN KARNEBEEK has laid down an entirely new principle. It would be well to determine its scope before entering into details.

Jonkheer van Karnebeek explains that he wishes to allow the occupant the privilege of levying requisitions in kind, because the subsistence of troops is a necessity of war, but he asks that contributions in money be prohibited because in his opinion they do not serve for the maintenance of the soldiers.

Colonel Gross von Schwarzhoff answers that this opinion does not correspond with the reality. The reason alleged by Mr. VAN KARNEBEEK ought not therefore to prevent him from voting for contributions. As a matter of fact, there are two ways of making requisitions, either as a collective measure, in which the communes are asked to furnish a certain amount of provisions, or as an individual measure, in which the inhabitants are directly asked for the cattle, provisions, etc., which they possess. These measures, especially the second, are both very disagreeable to the population, are often unjust,—because the poor peasant is asked for the only cow he possesses, while the well-to-do inhabitant is asked only for the few supplies that happen to be found in his house,—and, finally, they are not very effective.

As a consequence, a third mode of procedure has been adopted; it consists in the establishment of open markets where the supplies brought in by the inhabitants are bought for cash and at prices exceeding the average. This

measure is more humane, because the poor receive immediately the price of their goods, while at the same time being more effective, because the inhabitants accede to it willingly, and even provisions which have been carefully hidden are brought in. However, in order to be able to pay in cash, much money is needed, and it is the very purpose of contributions to supply this need of money.

[107] His Excellency Mr. **Beernaert** prefers the proposition of Mr. **ROLIN** to that of Mr. **VAN KARNEBEEK**. It has been decided to authorize the invader to put himself in the place of the authority of the invaded State and to collect the taxes. Must the principles be admitted which Colonel **GROSS VON SCHWARZHOFF** has just announced? This would be a poor sort of progress.

His Excellency Mr. **BEERNAERT** does not think that the right of the enemy to levy war contributions should be recognized in theory. Requisitions in kind are understood, being something which must be submitted to in consideration of indemnity; but are we, by means of an international act, going to recognize the invading army as having a right to levy contributions in money and to an unlimited degree? This would be sanctioning in law that which has hitherto been restricted to the domain of fact.

Mr. **ROLIN** has entered upon a line of thought akin to his own. Of the various propositions, that of Mr. **VAN KARNEBEEK** is the least acceptable to Mr. **BEERNAERT**.

**Jonkheer van Karnebeek** insists upon the difference existing between his standpoint and that of the other delegates who have made propositions or expressed opinions. That of Mr. **BEERNAERT** would leave the door open to extortions. At least an attempt was made in 1874 to impose restrictions, the special character of supplies in kind having been recognized as giving a right to indemnity or at least to a receipt. Mr. **VAN KARNEBEEK** points out that his wording leaves no doubt.

Mr. **Lammasch** takes up the defense of contributions, which have been so keenly attacked by Mr. **VAN KARNEBEEK**. These contributions appear to him to be a rather humane means of waging war, a very efficacious means of exhausting the resources of the adversary and of thereby putting an end to the war. It is impossible to resuscitate the dead or to restore amputated limbs, but those who have made contributions may be indemnified. In a word, the present system ought to be maintained.

Mr. **Odier** declares that, according to his instructions, it is impossible for him to subscribe to the principle that war ought to feed war. He could not declare his agreement with propositions regulating the right of the occupant with regard to private individuals unless the following principles were admitted:

The occupant may demand only regulation military supplies in kind and in money to which the armies of the legal Government would be entitled. As to extraordinary supplies, he is obliged to indemnify the persons who give up their property, or to deliver them a receipt. Contributions are allowable only by way of fine for acts of hostility for which all the inhabitants might be deemed responsible, or by way of a forced loan in case of absolute necessity; the forced loan must be repaid.

Colonel **Gross von Schwarzhoff** waives the right to answer Mr. **VAN KARNEBEEK** in detail, for he thinks that the first thing to do is to come to an understanding on the principle involved in the question raised. He understands very well that there are interests, humanitarian or economic, urging the reduction

of the consequences of invasion as much as possible; but besides these, there are the belligerents who also are entitled to certain consideration and whose action should not be too much trammelled.

He would understand the propositions made if it were a question of reaching decisions in this body which would be final when adopted by a majority vote, but the task of this subcommission is only to prepare a draft convention. Behind the delegates are the Governments, which will in turn examine the work accomplished here and which will be free to consent thereto or to refuse their signatures. If it is desired to obtain any result, it is necessary to make mutual concessions and not to seek to insert in the convention clauses which are contrary to the very essence of war.

He thinks that he may say that the axiom "war ought to feed war" is recognized in all the great armies of Europe and it will be impossible to do away with it. If the commission wishes to accomplish a useful work, Colonel GROSS VON SCHWARZHOFF believes that it will have to give up these attempts. For his part he could embrace the opinion of his Excellency Mr. BEERNAERT, that is, that the points on which understanding cannot be reached should be passed over in silence. The fact exists. It is possible not to mention it, but it cannot be forbidden; this would be going too far.

It goes without saying that a receipt should be given both for contributions in money and requisitions in kind. The reimbursement will be regulated, as Mr. LAMMASCH has said, after the conclusion of peace.

Chevalier **Descamps** desires to recall the fact that it was desired to place stricter limits on arbitrary judgment than those stipulated in 1874. Mr. LAMMASCH has advocated a peculiarly dangerous principle; according to him, the necessity of exhausting the pecuniary forces of the enemy as far as possible ought to be legalized. This course would end in completely ruining his [108] commerce. This is a view which Mr. DESCAMPS would not like to endorse.

It is proper to adopt the opinion of his Excellency Mr. BEERNAERT and to expect from the gradual refinement of manners the results which it is impossible to attain by means of a convention.

The **President** states that two entirely different viewpoints are represented: the one according to which it is desired in the interests of the weak to impose clearly defined restrictions on the occupant, and the other which consists in saying nothing about the rights of the invader and consequently about the limits that it is desired to impose upon him.

The **PRESIDENT** had suggested the idea of abolishing Article 40 and discussing Articles 41 and 42 with a view to securing a compromise in the form of a new wording. In the face of the two contradictory opinions which have come up in these deliberations, he desires to formulate an entirely different proposition, to wit:

To insert Article 40, which contains the general principle, after Article 5, and to have the contents of Articles 41 and 42 appear in the minutes by way of suggestion and not as an obligation. The **PRESIDENT** thinks that this proposition is in accordance with the original idea of the first delegate of Belgium to the effect that Articles 41 and 42 should be abolished and merely mentioned in the minutes.

In this way an eventual convention will leave open the questions relating to contributions and requisitions.

It is nevertheless permissible to doubt whether this mode of procedure would be more advantageous to the inhabitants.

His Excellency Mr. **Beernaert** states that the good-will of the entire assembly, actuated by a desire to attain a tangible result, is endeavoring in vain to reconcile irreconcilable interests. He adds that if it is stated that the occupant may collect such contributions as he wishes, independently of existing taxes, this is not a restriction but the recognition as a law of a fact which has nothing in common with law.

Mr. **Beldiman** desires, before the subcommission decides to abolish Articles 41 and 42, to make one more effort to reach an understanding, notably in regard to the most divergent viewpoints: that represented by Mr. **ODIER** and the military considerations of Colonel **GROSS VON SCHWARZHOFF**.

Inasmuch as there are four different propositions, is there not some means of asking their authors to meet together and try to find a compromise provision? He hopes that eventually the different opinions will not be found irreconcilable, but surely the assembly is not in a position now to pass on one of them.

His Excellency Count **Nigra** sums up the idea that is clearly gathered from the deliberations: it is impossible to prevent the fact and impossible to recognize the right.

Under these circumstances would it not be well to confine the matter to a single article worded as follows:

The occupant cannot require anything from the inhabitants of occupied countries without payment or receipt, and without a regular requisition on the part of the competent military authority.

Jonkheer **van Karnebeek** would regret the adoption of this provision as much as that of the system set forth by the Belgian delegates. In either case a step would be taken backward with respect to 1874. Then at least the idea was expressed that contributions of money could only be required as a substitute for supplies furnished in kind.

The system advocated by the delegates of Belgium, as well as the amendment of his Excellency Count **NIGRA**, leaves the door wide open. He could therefore not endorse them.

If the proposition which he has formulated does not appear acceptable, either the original text of Articles 41 and 42 or the text proposed by Mr. **ROLIN** ought to be preserved at least, although the wording thereof does not appear to him sufficiently positive.

His Excellency Mr. **Beernaert** asks in what respect Mr. **VAN KARNEBEEK** sees in Article 41 a restriction imposed upon an occupant.

Jonkheer **van Karnebeek** replies that the sense of that article seems to him to be that no contribution in money may be collected except as the equivalent of a tax, of supplies to be furnished in kind, or of a fine. This wording is opposed to the application of the system quite generally adopted at the end of the last century and at the beginning of the present century, namely, the system of contributions in money serving to enrich the belligerent.

Mr. **Rolin** recalls the fact that the object of new wording proposed by him was to reconcile certain divergent tendencies by placing restrictions on the action of the occupant, without, however, sanctioning the actual authority of the occupant as a right.

[109] However, these divergent tendencies appear to have subsisted nevertheless, and since there are now perhaps too many texts up for consideration, Mr. ROLIN withdraws his proposition.

Colonel Gross von Schwarzhoff remarks that more than once in this discussion a warning has been given that no backward step should be taken.

It appears to him that there is no danger of this in any event as no step either forward or backward has thus far been taken; the Brussels Declaration, not having been ratified, has remained in the draft stage.

Mr. Léon Bourgeois thinks it is a very good idea to leave to the drafting committee the task of making an effort toward harmonizing the complex principles just set forth. As a matter of fact it seems to him that two fundamental ideas have sprung from this long discussion. On the one hand all the delegates are agreed that they do not wish in any event to assign the character of *right* to that which is only a *fact, the fact of war*. On the other hand, all are likewise agreed in seeking the means of diminishing the burdens which this fact of war would impose on the populations.

How shall these two interests be reconciled?

Unanimity appears to have prevailed in regard to one primary point. This is that certain guaranties of form should be established for the levying of contributions, leaving aside their nature and their extent. This is one point settled, which enables a precise provision to be reached. This provision might prescribe that the levies should be paid in consideration of a receipt; that they should be in pursuance of a special order from the military or civil authority, and finally that these levies should be distributed according to the rules in force in time of peace in the occupied territory.

But there is another viewpoint on which the military delegates might agree with his Excellency Mr. BEERNAERT and Mr. ODIER; that is the question of "fines." It will be admitted that the imposition of a fine is not a normal procedure which may be applied in order to weaken resistance, and that it is a vexatious penalty which could only be warranted by a very reprehensible act on the part of the population as a whole.

On these two points no risk would seem to be run of recognizing the occupant as having rights, and in this way the objections of his Excellency Mr. BEERNAERT would be satisfied.

The task of the drafting committee would therefore consist in formulating a definite rule:

1. In regard to the mode of levying contributions, their distribution, and the responsibility of the authority levying them.

2. In regard to the cases in which and the conditions under which the occupant may impose fines.

It would be the duty of the committee to seek such a wording as would plainly appear to have no other purpose than to assert the rights of the occupied populations against the possible abuses of war.

The President believes that it will be very difficult for the committee to perform its task. The wording adopted at Brussels for Articles 41 and 42 is the result of laborious effort to reconcile different opinions. But in the face of the absolutely divergent viewpoints that have been represented here, there remains but one thing to do, and that is to abolish the articles which give rise

to controversy in regard to special rules and to be content with the article which proclaims the general principle.

It will be necessary, then, to leave to the progress of civilization and to the humanitarian sentiments of heads of armies the task of looking after the interests of the inhabitants as far as possible when contributions are to be levied.

His Excellency Mr. **Beernaert** thinks that, as Mr. **BOURGEOIS** has pointed out a series of points in regard to which there are hopes of reaching an agreement, the abolition of Articles 41 and 42 would perhaps be premature. He supports the propositions of Messrs. **BOURGEOIS** and **BELDIMAN**.

General **Zuccari** is of opinion that if it is desired to abolish Articles 41 and 42, it will be necessary to consider requisitions and contributions also in Article 40.

**Jonkheer van Karnebeek** believes that the situation is not well understood. The propositions made do not represent four different systems. There are only three:

1. The system of the Belgian delegates;
2. The system of preparing a provision on the basis of 1874, as suggested by Mr. **BOURGEOIS**; and
3. His own system, which is more extensive in its scope than that on which the text of 1874 was based.

It does not seem to him that Colonel **GROSS VON SCHWARZHOFF** really advocates a different principle, as the explanation given by him relates at [110] bottom only to what is defined in the original Brussels draft and is therefore in accordance with the system of Article 41.

His Excellency Mr. **Beernaert** observes that not only has the Declaration of Brussels not been ratified, as was remarked by Colonel **GROSS VON SCHWARZHOFF**, but that there was not even any vote. Belgium, the Netherlands, and still other countries have admitted nothing with regard to contributions and requisitions.

The **President** deems it useful that the assembly should first make known its desire to abolish Articles 41 and 42, or to preserve them subject to subsequent change of text.

Mr. **Bourgeois** insists that his proposition be first put to a vote.

Mr. **Beldiman** also thinks that a vote cannot be taken now on the maintenance of the article, as it might be necessary later on to vote for its abolition in case the form of wording to be found by the drafting committee should appear inadequate.

His Excellency Mr. **Beernaert** also thinks that the proposition of Mr. **BOURGEOIS** constitutes a previous question.

Mr. **Bourgeois**, summing up, says that the task of the drafting committee will therefore be to gather from the discussion those points in regard to which an agreement might be reached, and to eliminate those in regard to which an understanding will have been recognized as being impossible.

The proposition of Mr. **BOURGEOIS** is adopted.

Mr. **BOURGEOIS**, at the request of the **PRESIDENT**, declares that he is ready to take part in the labors of the committee.

The meeting adjourns.



# TENTH MEETING

JUNE 17, 1899

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Mr. **Martens** presiding.

The minutes of the ninth meeting are read and adopted.

The **President** says that several delegates have expressed a desire to have the minutes printed right now and distributed among the delegates for their personal use. These documents would be very useful to them in preparing the reports which they are to send to their respective Governments.

Mr. **Raffalovich** remarks that there would be insurmountable difficulties in the way of an immediate publication of these documents. It would be impossible, however willing the Secretariat might be, to properly perform this additional labor. He proposes that it be done after the closing of the Conference.

His Excellency Mr. **Beernaert** asks that before the printing is done, the proof sheets be given to the members of the subcommission in order that they may review the passages which concern them.

He embraces this opportunity to thank and congratulate the Secretariat for the accuracy and impartiality with which it is performing its arduous task.

It is decided that action shall be taken in accordance with the opinion of the **PRESIDENT**, Mr. **RAFFALOVICH**, and his Excellency Mr. **BEERNAERT**, that is, that the minutes be sent to the printer after the closing of the labors of the Conference and that the proof sheets be delivered to each of the members of the subcommission.

The **President** says that Mr. **ASSER**, president of the first subcommission of the Second Commission which has just terminated its labors, asks permission on behalf of his colleagues to submit the report of the first subcommission directly to the Conference assembled in plenary session.

This procedure would enable time to be gained, and the members of the assembly are requested to make known whether they permit its adoption.

Mr. **Beldiman** asks that no change be made in a procedure which has already been adopted in plenary session. This modification exceeds the jurisdiction of the subcommission. As far as he is concerned, he does not think he can endorse the proposition of Mr. **ASSER**.

[111] Mr. **Bourgeois** thinks that Mr. **BELDIMAN** is actuated by a scruple of form which is justified for that matter in his opinion. In order to take this into account, a meeting of the Commission might be held just before the plenary session at which meeting the report could be read without being discussed.

Baron **Bildt**, who is ready to endorse any proposition calculated to accelerate the progress of the work, thinks that whenever an objection has been made by one of the delegates it should be taken into account.

But moreover, in the first subcommission a provision was adopted by a majority of one vote. As it was a question of an obligation which some of the delegates considered too onerous for small neutral States, these delegates will probably desire to revert to this point in the plenary session of the Commission in order to reach an understanding without which they will probably not be able to sign except with reservations.

As a discussion on this point is inevitable, it is better for it to take place before the Second Commission than in plenary session of the Conference. Baron BILDT therefore sides with Mr. BELDIMAN.

The **President**, taking into account the observation of Baron BILDT, which is approved by the subcommission, will reach an understanding on this subject with Mr. ASSER.

The **PRESIDENT** says that the drafting committee has unanimously agreed to present to the subcommission the text of four articles relating to contributions and requisitions.<sup>1</sup> These new texts are preceded by a very slightly revised wording of Article 5, relating to established taxes, which has already been voted at its first reading. They are worded as follows:

#### ARTICLE 5 (*already voted*)

If, in the territory occupied, the occupant collects the taxes, dues, and tolls imposed for the benefit of the State, he shall do so, as far as is possible, in accordance with the rules of assessment and incidence in force, and shall in consequence be bound to defray the expenses of the administration of the occupied territory to the same extent as the legitimate Government was so bound.

#### ARTICLE A

In addition to the taxes mentioned in the above article, the occupant can levy other money contributions in the occupied territory only for the needs of the army or of the administration of the territory in question.

#### ARTICLE B

No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible.

#### ARTICLE C

No contribution shall be collected except under a written order, and on the responsibility of a commander in chief.

The collection of the said contribution shall only be effected as far as possible in accordance with the rules of assessment and incidence of the taxes in force.

For every contribution a receipt shall be given to the contributors.

#### ARTICLE D

Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the population in the obligation of taking part in the operations against their country.

[112] Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied.

Contributions in kind shall, as far as possible, be paid for in cash, and if not, vouchers shall be given.

<sup>1</sup> See annex B.

Finally, Mr. **Crozier** proposed the following articles: "Article 43 (provisional number). Every money contribution or requisition in kind intended to serve in the operations or for the maintenance of the occupant shall be returned or paid for."

The examination of the texts proposed to the subcommission by the drafting committee is now taken up.

Before discussing them, the **President** wishes to thank warmly the members of this committee, as well as his Excellency Mr. **BEERNAERT** and Messrs. **VAN KARNEBEEK** and **ODIER**, who have kindly lent him their assistance.

In view of these texts, Lieutenant Colonel **von Khuepach** and Captain **Crozier** withdraw those which they had proposed.

Mr. **Odier**, on behalf of the Swiss delegation and in pursuance of orders from his Government, asks that the following declaration be inserted in the minutes:

In taking part in the discussion of the articles of the draft of an international declaration concerning the laws and customs of war, and notably the articles relating to military authority on the territory of the hostile State, the representatives of Switzerland in no wise mean to admit thereby that the territory of the Swiss Confederation may be occupied by a foreign army, for such an occupation could only take place in consequence of a violation of Swiss neutrality, which is recognized by the Powers and always scrupulously observed by Switzerland.

His Excellency Mr. **Beernaert** states that he has on several occasions made similar observations in regard to Belgium, and also asks that this statement be inserted in the minutes.

His Excellency Mr. **Eyschen** makes the same request.

The **President** records the declarations of Mr. **ODIER** and their Excellencies Messrs. **BEERNAERT** and **EYSCHEN**.

Mr. **Rolin** declares that the spirit of the text as worded by the committee is in accordance with the declarations of the preceding speakers. It has never been a question of recognizing the occupant as having a right, but of limiting the consequences of the fact of occupation.

The new wording of Article 5 (already voted) is unanimously adopted in the terms proposed by the committee.

Article A, proposed by the committee, is now taken up.

Mr. **Odier** regrets that he cannot accept this wording of Article A, in which he himself had participated, but he has since received different instructions which compel him to propose amendments to Articles A, C and D on behalf of his Government and to propose a new Article E. He proposes the following wording for Article A:

*If, in addition to the taxes mentioned in the above article, the occupant levies other money contributions in the occupied territory, this shall be done only in case of absolute necessity and for the needs of the army or of the administration of the territory in question.*

The modification relates to two points:

1. The employment of the doubtful form by adding the word "if" at the beginning of the article.
2. The introduction of the words "in case of absolute necessity."

**Mr. Léon Bourgeois** sees no objection to the acceptance of **Mr. ODIER's** amendment.

Although the wording of Article A does not satisfy him, his Excellency **Mr. Beernaert**, in a spirit of conciliation, declares his readiness to vote for it either with **Mr. ODIER's** amendment, which appears to him preferable, or even in its present form.

**Colonel Gross von Schwarzhoff**, referring to his detailed explanation in the drafting committee, declares that the same grave reasons which he has already stated in the course of the preceding meeting prevent him from accepting the proposition of **Mr. ODIER**.

**Mr. Beldiman** does not believe that there are any insurmountable objections to adopting the words proposed by **Mr. ODIER**: "in case of absolute necessity." However, the wording proposed by the committee is the result of a great effort.

In order not to jeopardize the unanimity secured, he deems it preferable not to adopt the modification proposed by the Swiss delegate.

**Mr. Léon Bourgeois** is of opinion that the words "for the needs of the army," etc., sufficiently limit the exercise of the right of collection and satisfy the same fears as the addition suggested by the Federal Government. If [113] the latter would consent to give up its amendment, the desired unanimity might be recovered.

**Mr. Lammasch**, in consideration of the efforts which the preparation of the draft has cost, endorses the words of **Mr. BELDIMAN**.

The **President** asks the Swiss delegate whether he would not consent to have the text of his declarations embodied in the minutes.

**Mr. Odier**, having formal instructions, regrets that he cannot comply with this request. His amendment more strictly defines the cases of necessity in which it would be permissible to collect contributions in money other than taxes, duties, and tolls.

The expression "the needs of the army" is deemed too vague by his Government which considers that the commander ought not to resort to the means in question except in case of absolute necessity. In the absence of such a restriction, the commanders may estimate the needs of their army in very different ways.

**Colonel Gross von Schwarzhoff** remarks that the vague character of the text was chosen intentionally. To attempt to define the details of limitation of the rights of the occupant would be to jeopardize the success of the work of the committee. He therefore requests **Mr. ODIER** not to insist.

The subcommission accepts the first part of the amendment of **Mr. ODIER**, and the article thus modified is unanimously adopted, with the exception of one vote (that of Switzerland):

If, in addition to the taxes mentioned in the above article, the occupant levies other money contributions in the occupied territory, this shall only be for the needs of the army or of the administration of the territory in question.

Article B is adopted unanimously with the text proposed by the committee.

Article C is now taken up.

**Mr. Odier** proposes to word the last paragraph as follows:

For all contributions a receipt shall be given to the persons making the

contributions, and this receipt shall entitle them, upon the restoration of peace, to a refunding of the amount paid.

According to him, a simple receipt with recognition of the right to reimbursement does not afford a sufficient guaranty to the populations.

His Government wished to expressly guarantee the right to reimbursement of the sum paid.

Mr. **Léon Bourgeois**, expressing his personal opinion, opposes the addition of the sentence proposed by the Swiss delegate.

The question of the indemnities to be allowed is within the domain of the municipal law of each State. He does not think it is within the jurisdiction of the subcommission.

If the principle involved therein were admitted, it would likewise be necessary to enter into a series of details which it would be difficult to regulate here. By whom should the reimbursement be made? How insure the performance and enforcement of this obligation? In the opinion of the committee, the receipt is an authentic title in the hands of the State, which will enable it to equitably distribute, at the end of the campaign, and if it sees fit, the indemnities due. He therefore proposes that the text be maintained.

Colonel **Gross von Schwarzhoff** endorses these observations; the State to which the person furnishing the contribution belongs is in duty bound to compensate him, but it cannot be stipulated in an international convention that a State contracts an obligation towards its subjects.

Mr. **Beldiman** recalls the fact that this question was settled in 1874 in the same way after mature deliberations and in spite of the same objections. It would be very difficult to find a better solution.

The **President** requests the Swiss delegates not to insist on their proposition, since the question raised by them comes entirely within the domain of municipal law and cannot be regulated by an international convention.

Colonel **Künzli** declares that, according to his instructions, he is obliged to maintain the amendment of the Swiss delegation.

General Sir **John Ardagh** proposes the adoption of an additional article in regard to reimbursement for receipts and vouchers. This would enable Mr. **ODIER** to accept Article C without prejudicing the question of the obligation to make reimbursement.

His Excellency Mr. **Beernaert** calls attention to a slight modification of form to be introduced into paragraph 2 of Article C:

This collection of contributions shall be effected as far as possible in accordance with the rules of assessment and incidence of the taxes in force.

The question is referred to the drafting committee. The choice of another expression to be eventually substituted for the words "commander in chief" is likewise left to the committee.

Mr. **Beldiman** observes that the words "commander in chief" do not designate a special grade, but refer to the person who is acting as commander in chief.

[114] In answer to a question by Mr. **BOURGEOIS**, Colonel **Künzli** states that his instructions compel him to vote against the whole article unless the amendment of the Swiss delegation is adopted.

Article C is unanimously adopted with the exception of one vote (that of Switzerland).

Article D is now taken up.

Mr. **Odier** proposes to substitute the word "receipt" (*reçus*) for the word "vouchers" (*quittances*) in the third paragraph, and to add thereto: "giving right to a just indemnity."

His Excellency Mr. **Beernaert** favors this substitution because he, like Mr. **ODIER**, is of opinion that the furnishing of supplies in kind is usually evidenced by a receipt and not by a voucher.

As regards the principle involved in the indemnities to which the receipts would give a right, Colonel **Gross von Schwarzhoff** states that he regrets being obliged to make the same objections thereto as he expressed before against the other Swiss amendments in general.

Mr. **Beldiman**, for the sake of securing unanimity in all cases possible, proposes to vote by paragraph since the amendment of the Swiss delegation relates only to paragraph 3.

The **President**, endorsing this proposition, puts paragraphs 1 and 2 successively to a vote, and they are unanimously adopted.

Paragraph 3 is adopted unanimously with the exception of Switzerland, which votes in the negative.

The article will read as follows, the words "a receipt" being substituted therein for "vouchers":

Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the population in the obligation of taking part in the operations against their country.

Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied.

Contributions in kind shall, as far as possible, be paid for in cash, and if not, a receipt shall be given.

Mr. **Léon Bourgeois** thinks that he is voicing the intentions of the drafting committee and of the subcommission by making an urgent appeal to the Swiss delegates to represent to their Government how regrettable it is that they are unable to accede to propositions which would have met unanimous endorsement if the Swiss Government had been able to consent to them.

He points out that there has never been any intention of recognizing the fact as a right, and he hopes that the Swiss Government will be convinced that an endorsement of the propositions of the drafting committee can but be in conformity with the interests of the populations themselves and will never entail consequences which a spirit of patriotism could not countenance.

Colonel **Künzli** says that the delegates from Switzerland will take this appeal into account.

**Jonkheer van Karnebeek**, with a view to showing how difficult it is to determine in advance the extent to which those entitled to reimbursement should be indemnified, cites as an example the obstacles recently encountered in the regulation of a similar question.

It was a question of an examination in time of peace of a law submitted to the States General of the Netherlands concerning the indemnities due to those

whose property might be damaged by inundation of the country in case of war.

These difficulties, not only from a legal standpoint but also from the standpoint of equity, demonstrated that it is better to postpone a decision in such matters to the time when the event occurs.

He hopes that this consideration may perhaps tend to induce the Swiss Government to change its opinion.

The **President**, after renewing his thanks to the drafting committee, says that in accordance with a previous decision, these articles are to be inserted in Chapter I.

Mr. **Odier** proposes, in the name of the Swiss delegation, a new article worded as follows:

No reprisals may be exercised against the population of the occupied territory for having openly taken up arms against the invader.

The **President** proposes to postpone its examination until Articles 9 and 10 are discussed.

This suggestion, endorsed by Mr. **Odier**, is adopted.

Article 6 of the Brussels draft is read:

An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for the operations of the war.

[115] Railway plant, land telegraphs, steamers and other ships, apart from cases governed by maritime law, as well as depots of arms and, generally, all kinds of war material, even if belonging to companies or to private persons, are likewise material which may serve for military operations and which cannot be left by the army of occupation at the disposal of the enemy. Railway plant, land telegraphs, as well as steamers and other ships above mentioned shall be restored and compensation fixed when peace is made.

The **President** recalls the fact that Mr. **ROLIN** proposed a new wording in accordance with the conclusions of his Excellency Mr. **BEERNAERT**, as follows:

If the army which invades or occupies a territory proceeds to seize movable objects which may be used for the operations of the war, such as railway or telegraph plant, steamers and other ships (apart from cases governed by maritime law), arms and munitions of war, this seizure shall never have any other character than that of a sequestration so far as concerns those of the objects which are the property of companies or of private persons.

Especially the plant of railways coming from neutral States, whether the property of those States or of companies or of private persons, shall be sent back to them as soon as possible and shall not be used for military operations.

His Excellency Mr. **Beernaert**, being of opinion that the two paragraphs of this article are based on different ideas, proposes that they be discussed separately.

This proposition meets no objection and the **President** opens the discussion on the first paragraph.

His Excellency Mr. **Beernaert** declares that he cannot endorse the amendment of Mr. **ROLIN**, which tends to abolish this paragraph as being useless. He justifies the maintenance thereof because the right of the occupant is thus restricted to things which are of a nature to serve in the operations of the war.

Mr. **Renault** thinks that there would not be any great advantage in abolishing it inasmuch as the provisions of Article 38, although embodied by the subcommission in the first chapter, deal only with the private property of individuals and do not involve the private property of the State. According to Mr. **ROLIN**'s ideas, all limitation would disappear as regards the confiscation of the property of the State.

Mr. **Rolin** says that as his Excellency Mr. **BEERNAERT** has no objections to the maintenance of the first paragraph, he withdraws the amendment which he had made with a view to reconciling the various opinions.

Paragraph 1 is unanimously adopted.

Paragraph 2 is now taken up.

His Excellency Mr. **Beernaert** thinks that the subcommission could not vote for the second paragraph of Article 6 without acting in contradiction to the principles already adopted in regard to the inviolability of private property and the prohibition of all pillage. As a matter of fact, this paragraph authorizes the belligerents to place their hands on things which constitute a part of private property.

The necessities of war may justify their seizure and sequestration, but not their confiscation. It would be all the more difficult for him to vote for the second paragraph because the inviolability of private property is a constitutional rule in Belgium except in the case of expropriation. The Belgian delegation endorses the amendment made by Mr. **ROLIN** in regard to this paragraph.

Mr. **Rolin**, in connection with an observation made by his Excellency Mr. **BEERNAERT**, expressly states that it is necessary to mention the invader and not the occupant, inasmuch as it might happen that an invading belligerent would seize the articles in question without there being any occupation.

Colonel **Gross von Schwarzhoff** considers that the question laid down in this paragraph is of very great importance. He asks whether the sequestration implies a right to use the objects therein mentioned.

His Excellency Mr. **Beernaert** observes that the right of requisition has been recognized, but how is it possible to sanction in an international conventional act an exception to the inviolability of private property?

Colonel **Gross von Schwarzhoff** proposes to invite the drafting committee to find a satisfactory form of wording.

This proposition is adopted.

Mr. **Odiër** proposes that a third paragraph be added to Article 6, worded as follows: "Railway plant belonging to the State shall likewise be restored upon the conclusion of peace."

He is of opinion that it would not only be of great importance to [116] specify as far as possible the material which is to be restored after the conclusion of peace, but that it would be moreover of great interest to sanction this principle in a convention.

It is especially after a disastrous war that the confiscation of the railway plant of a State would constitute an enormous impediment to the restoration of commerce and a hindrance to the reprovioning of the country.

Mr. **Bille** has laid upon the table an amendment to Article 6 consisting of the addition in paragraph 2 after the words "*land telegraphs*" of the words "*including landing cables established within the maritime territorial limits of the State.*"



He bases his action on the following considerations:

The same amendment was presented by the delegate from Denmark in 1874. He was instructed by his Government to call the special attention of the delegates to the ever-increasing importance of the question regarding the protection to be given to submarine cables. He was instrumental in having embodied in the Protocol a recommendation that the Governments should take up this question.

However, there was a lack of time to deal with the subject and the Danish delegate had to be content with proposing the same amendment in regard to landing cables.

The Government of Denmark wondered whether the opportunity now presented should not be seized in order to resume consideration of the question of submarine cables at the point where the Brussels Conference left it. However, as the question is not referred to in the MOURAVIEFF circular, it may be contended that the Conference has no jurisdiction on this subject. It may be further objected that the question of submarine cables comes under the sway of maritime law and therefore remains outside the scope of the draft Declaration of Brussels.

Finally, there is no doubt but that this question offers special difficulties whose solution in this commission might be further impeded by the fact that the delegates would perhaps have to consult their Governments at length on the subject. For these reasons Mr. BILLE refrained from making reference, in the amendment to Article 6, to submarine cables in their whole extent. He was content to propose that landing cables in territorial waters, that is, within a radius of three marine miles from the coast, be classed with land telegraphs. This amendment cannot offer any of the difficulties which might have been raised by the mention of submarine cables.

If the amendment should be accepted the gap created by this omission would nevertheless still remain. Equity will always require that the submarine cables connecting the belligerent with other countries enjoy international protection on the same basis as inland telegraphs, and that neutral property have at least the same privileges as are insured to enemy private property. Mr. BILLE expresses confidence that this Conference will not wish to exclude submarine cables, which represent enormous interests, from the domain of this mutual insurance company against the abuses of force in time of war which, according to the happy words of the President of the Commission, it is the purpose to organize among the States.

By means of the foregoing observations, Mr. BILLE therefore desires to have it appear in the minutes that the question of submarine cables remains to be solved, and he would like to be able to add that if this Conference declares itself incompetent in this regard, it nevertheless desires to see it submitted to another conference better prepared to regulate it.

His Excellency Mr. **Beernaert** recalls the proposition which he formulated to the effect that a new paragraph worded as follows be added to Article 6:

The plant of railways coming from neutral States, whether the property of those States or of companies, shall be sent back to them as soon as possible and shall not be used for military operations.

Like Mr. BILLE, he wishes to state a few words in support of his proposition.

The plant of railways coming from neutral States should in all cases be governed by other rules than those of the belligerents.

It is a question here not only of private property but of the property of foreigners and of things which their owners themselves could not devote to the use of war without ceasing to be neutral.

There is therefore a threefold reason why the belligerent should not be allowed either to seize such material or to use it for himself.

It is useless to lay stress upon the extreme importance possessed nowadays by transportation material in time of war, and on the fact that this material cannot be used in a manner contrary to the obligations of neutrality.

His Excellency Mr. Eyschen would like to add a few observations of a practical nature to the considerations of equity and justice set forth by Mr. BEERNAERT.

In recent wars the right of requisition of material coming from neutral [117] railroads has occasionally been abused. After being requisitioned it has been retained throughout the campaign when it could and ought to have been returned.

The effect of the proposed amendment would be especially felt in the relations of railroads situated on the frontiers of two countries and furthermore in the relations created by the great international trains.

It often occurs that highly important relations exist between two industrial basins situated in contiguous countries, as, for instance, where coal is situated on one side and minerals on the other. In this case an exchange of several thousand cars is made each week. It also happens that a certain part of a country is dependent upon a seaport situated on neutral territory whose commerce in the first country compels it to send a considerable amount of rolling stock there. The maintenance of all these peaceful and fruitful relations should be assured during war. If they are disturbed, not only the capital invested in industry and commerce will suffer, but labor will also be involved, and what shall we say of the numerous workmen reduced to idleness and destitution both within and beyond the frontier.

As to the gravity of the common interest presented by large international trains which insure a continuity of relations between the nations of the continent, it is useless to dwell thereon. They are the work of the economic solidarity of the peoples.

These two groups of essentially peaceful and sympathetic interests seem, like the wounded, works of art, etc., justified in demanding to be spared except in case of absolute necessity.

Now, the legitimate interest of the belligerent does not seem to be opposed to the neutralization of rolling stock coming from States which remain disconnected with the war. For, if we continue to refuse the latter any guaranty of restoration of their material, the belligerent may retain what he had thereof at the time of the declaration of war, but, from that day on, the relations between the belligerent State and the neutral country will cease, and industry, commerce, and labor in the two countries will suffer in consequence. In the face of the complaints of its own nationals the belligerent will have to leave in the industrial and commercial centers a large part of its own equipment, which would have become available if the neutral equipment had been able to supply the insufficiency created by the war.

Colonel **Gross von Schwarzhoff** thinks that he ought now to explain briefly his view of this question. In his opinion it comes within the chapter reserved for the rights and duties of neutrals, whereas the present discussion treats only of the respective position of the belligerents.

The question would provoke many difficulties, whose consequence may not at once be appreciated, and it ought to be referred to the subsequent conference mentioned before in this subcommission.

Mr. **Lammasch** proposes to add to the enumeration contained in Article 6 the word "telephones," and he asks the drafting committee to kindly take account of his proposition.

General Sir **John Ardagh** will support the proposition of Mr. **BILLE** if the latter will eliminate therefrom the definition of the territorial sea as three marine miles.

Mr. **Bille** is not willing to admit this modification. The extent to which the cables would be protected would remain indefinite as far as their submerged part were concerned. He by no means intended to raise the question of the limit of the territorial sea. By taking three miles as the limit in this provision, which is entirely practical in its scope, no risk will be run of acting in contradiction to the views of certain Governments. The idea has been entertained of extending this limit but as far as he knows no desire has been expressed of fixing it at less than three miles.

Mr. **Beldiman** proposes to reserve this question also for the drafting committee, which Mr. **BILLE** will kindly join.

General Sir **John Ardagh** defines his opinion to the effect that if any limit is mentioned and determined by figures an encroachment will be made on the question of protecting submarine cables. From the standpoint of the labors of this subcommission it is sufficient to deal only with landings.

The **President**, with a view to accelerating the labors of the subcommission, requests the delegates to kindly communicate to the drafting committee such amendments as they may have to propose to Articles 7 and 8.

Colonel **Gilinsky** is of opinion that Mr. **BILLE**'s amendment renders it necessary to assign to the committee at least one of the naval technical delegates.

Mr. **Renault** thinks that the proposition of Mr. **GILINSKY** demonstrates that the amendment of Mr. **BILLE** is outside of the domain of the Brussels Declaration. They ought to have refrained from determining the limit of the territorial sea. Too many difficulties would arise if the subcommission [118] (which for that matter does not appear to him competent to deal with the subject) wished to fix a limit for the special point contemplated by the amendment of Mr. **BILLE**.

Mr. **Bille** observes that it is a question here solely of classing landing cables with land telegraphs.

As these cables are costly and difficult to lay, there are at least the same reasons for indemnifying the States owning them in case of damage. He therefore does not believe that the question here involved is one that would come rather within the competence of naval specialists, the protection he wishes to extend to these cables being justified by their position on the territory. He does not oppose having the question referred to the drafting committee.

The **President** states that this will be done, it being the duty of the committee to first decide on the question of its competence.

The meeting adjourns.

# ELEVENTH MEETING

JUNE 20, 1899

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**Mr. Martens** presiding.

The minutes of the tenth meeting are read and adopted.

The **President** states that in accordance with its instructions the drafting committee in its meeting of June 17 discussed the second paragraph of Article 6, and Articles 7 and 8, with the assistance of Messrs. **BILLE** and **ODIER**.

As set forth in the report addressed to the subcommission,<sup>1</sup> this committee agreed unanimously regarding the wording which it proposes for these articles, as well as for the new provisions. It is now for the subcommission to approve the results attained.

Paragraph 2 of Article 6 is adopted in accordance with the text proposed, as follows:

Railway plant, land telegraphs, including landing cables, telephones, steamers and other ships, apart from cases governed by maritime law, as well as depots of arms and generally all kinds of munitions of war, although belonging to companies or to private persons, are likewise material which may serve for military operations, and which cannot be left by the army of occupation at the disposal of the enemy. Railway plant, land telegraphs, including landing cables and telephones, as well as steamers and other ships above-mentioned shall be restored and compensation fixed when peace is made.

The new provision concerning the railway plant of neutrals, proposed by his Excellency **Mr. BEERNAERT** to the subcommission, and the wording of which was modified by the drafting committee, is now read:

The plant of railways coming from neutral States, whether the property of those States or companies or of private persons, shall be sent back to them as soon as possible.

**Chevalier Descamps**, in making a reservation in regard to the form of the commentary given to this proposition by the drafting committee, wishes to remark that it is not a question in this article of the relations between belligerents themselves, but of the relations between the belligerents and the States which remain aloof from the war. In his opinion the provision in its vague form would tend rather to cause than to avoid difficulties. The necessities of war can never from any standpoint constitute the standard for the relations between belligerents and neutrals. It would be neither in accordance with justice nor with honor to attempt to strike an enemy through the heart of a friend.

<sup>1</sup> See annex C.

He therefore makes reservations in regard to the scope which the com-  
[119] mentary of Mr. ROLIN seems to assign to this article. The belligerents cannot use the resources of neutrals for the purposes of the war.

The **President** says that the considerations of Mr. DESCAMPS will be inserted in their proper place in the minutes.

The article is unanimously adopted in accordance with the proposition of the drafting committee.

Article 7 is read and unanimously adopted with the text of 1874, as proposed by the drafting committee:

The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.

Article 8 is read:

The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences even when State property, shall be treated as private property.

All seizure or destruction of, or willful damage to, institutions of this character, historic monuments, works of art and science should be made the subject of legal proceedings by the competent authorities.

In regard to the first paragraph, the **President** says that at the request of the delegate from Persia the committee expressed the conviction that there is no distinction to be made on this subject between the different forms of religion; the expression "institutions dedicated to religion" therefore likewise applies to mosques.

The first paragraph is unanimously adopted with the wording of 1874 in accordance with the conclusion of the committee.

For the second paragraph the wording proposed by the drafting committee is unanimously adopted as follows:

All seizure or destruction of, or willful damage to, institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.

The examination of the second chapter of the draft Declaration of Brussels is now taken up: "Who should be recognized as belligerents; combatants and non-combatants." Two propositions were laid on the table at the end of the last meeting and distributed to the members.<sup>1</sup>

Articles 9 and 10 are read:

#### ARTICLE 9

The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions:

1. That they be commanded by a person responsible for his subordinates;
2. That they have a fixed distinctive emblem recognizable at a distance;
3. That they carry arms openly; and
4. That they conduct their operations in accordance with the laws and customs of war.

In countries where militia constitute the army, or form part of it, they are included under the denomination "army."

<sup>1</sup> See the texts hereinafter.

## ARTICLE 10

The population of a territory which has not been occupied, who, on the approach of the enemy, spontaneously take up arms to resist the invading troops without having had time to organize themselves in accordance with Article 9, shall be regarded as belligerents if they respect the laws and customs of war.

Before opening the discussion the **President** wishes to make some observations.

These articles are of great importance. The dominating idea of the Brussels Conference in this regard was that it devolved upon all the Governments as a sacred duty to do all in their power in an endeavor to diminish the evils and calamities of war.

It is in view of this sublime purpose that the defensive forces should be organized and disciplined, above all in our time.

However, it is not intended to deny the right of populations to defend themselves. This right is sacred. But, no less sacred is the duty of Governments not to sacrifice useless victims in the interest of the war. It was in order to fulfill this duty that the Russian Government in 1874 proposed to all the States that they adopt conditions easy of fulfillment in order to enable the populations to take part in the operations of war.

The Brussels Conference, therefore, by no means intended to abolish the right of defense, or to create a code which would abolish this right. It was, on the contrary, imbued with the idea that heroes are not created by codes, but that the only code that heroes have is their self-abnegation, their will and their patriotism.

The Conference understood that its duty was not to try to formulate a code for cases which cannot be foreseen and codified, such as acts of heroism on the part of populations rising against the enemy.

It simply wished to afford the populations more guaranties than had existed up to that time.

Formerly, the conditions imposed upon populations at the will of the belligerents were much more difficult to fulfill than those laid down in Articles 9 and 10.

This must not be lost sight of, and it must be remembered that it is not the purpose of these provisions to codify all cases that might arise. They have left the doors open to the heroic sacrifices which nations might be ready to make in their defense; a heroic nation is, like heroes, above codes, rules, and facts.

It is not our province, adds Mr. MARTENS, to set limits to patriotism; our mission is simply to establish by common agreement among the States the rights of the populations and the conditions to be fulfilled by those who desire legally to fight for their country.

And it is also along this order of ideas that Mr. MARTENS desires to make the following declaration, which he wishes to have inserted in the minutes and which, he hopes, will succeed in removing all misunderstanding which may still exist in regard to the purport of Articles 9 and 10.

The **PRESIDENT** reads his declaration, worded as follows:

The Conference is unanimous in thinking that it is extremely desirable that the usages of war should be defined and regulated. In this spirit it has adopted a great number of provisions which have for their object the determination of

the rights and of the duties of belligerents and populations and for their end a softening of the evils of war so far as military necessities permit. It has not, however, been possible to agree forthwith on provisions embracing all the cases which occur in practice.

On the other hand, it could not be intended by the Conference that the cases not provided for should, for want of a written provision, be left to the arbitrary judgment of the military commanders.

Until a perfectly complete code of the laws of war is issued, the Conference thinks it right to declare that in cases not included in the present arrangement, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity, and the requirements of the public conscience.

It is in this sense especially that Articles 9 and 10 adopted by the Conference must be understood.

His Excellency Mr. **Beernaert** says that he has had the honor to express his opinion in regard to Articles 9 and 10, but that he has also more than once declared that he was fully aware of the great importance of having the Conference accomplish a common work.

Although Articles 9 and 10 do not come up to what he would have wished, he will vote for them and all the more readily by reason of the declaration just made by the **PRESIDENT**. However, as this declaration is very important and appears to express the unanimous sentiment of the assembly, it ought to be inserted both in the minutes of the meeting and in the final protocol, or else in the general act which is to crown the work of the Conference.

He asks, however, to recall the terms in which the real meaning of Articles 9 and 10 was fixed at Brussels in 1874.

In the original draft it had been sought to regulate more precisely the duties of invaded populations toward the enemy. A special paragraph (46) contemplated the case of the uprising of the population in an occupied country, and subjected to the rigors of justice those who took part therein. Paragraph 47 repressed isolated acts of hostility. But no one thought of disregarding the

fact that the right of a country to defend itself is absolute, and that it [121] is not only a right but a duty, and an imperious one at that. Baron

**JOMINI** said this on July 31 and August 17;<sup>1</sup> General **LEER** repeated it on August 26;<sup>2</sup> while Baron **BAUDE**, delegate from France, asked that the right be stated in formal language.<sup>3</sup>

However, such a wording offered great difficulties; over against rights were set correlative duties, and then there arose the individual cases which would have to be regulated. Such difficulties were encountered that in the end paragraphs 46 and 47 were abolished, it being stated that the Conference left unsettled the questions relating to uprisings in occupied territory and to individual acts of war.

His Excellency Mr. **BEERNAERT** recalls the terms in which this was stated by Baron **LAMBERMONT** on August 22<sup>4</sup> and by Baron **BLANC** on August 26.<sup>5</sup>

Therefore, the only point settled is that armies, militia, organized bodies,

<sup>1</sup> See *Actes de la Conférence de Bruxelles 1874*, pp. 35, 147.

<sup>2</sup> *Ibid.*, p. 245.

<sup>3</sup> *Ibid.*, p. 161.

<sup>4</sup> *Ibid.*, p. 220.

<sup>5</sup> *Ibid.*, p. 224.

and also the population which, even though unorganized, spontaneously takes up arms in unoccupied territory, must be regarded as belligerents. All other cases and situations are regulated by the law of nations according to the terms of the declaration just read by the **PRESIDENT**.

But these are rules, and none has outlined them better than another **MARTENS**, who has also been an honor to his country. To-morrow as to-day the rights of the victor, far from being unlimited, will be restricted by the laws of the universal conscience and no general would dare violate them for he would thereby place himself under the ban of civilized nations.

Colonel **Künzli** asks that the whole chapter and the article proposed by Sir **JOHN ARDAGH**<sup>1</sup> be taken up for discussion together.

The **PRESIDENT** says that it will be necessary to proceed to the deliberations article by article, but his statement and his declaration relate to Articles 9 and 10 as a whole, they being closely connected.

General **den Beer Poortugael**, while fully endorsing the considerations set forth by the **PRESIDENT** and his Excellency Mr. **BEERNAERT**, wishes to add a few words.

He is of opinion that the public errs in supposing that it is the small States that benefit least by the provisions contained in Articles 9 and 10. There is no antagonism here between the interests of the great and of the small States. The latter will benefit specially by these provisions for as a general rule they will have to wage war on their own territory and because the numerical inferiority of their military forces renders the cooperation of their population still more indispensable to them than it is to the large States. These, on the other hand, will have to wage war more often than the small States; and who guarantees to them that their populations will not likewise be obliged some day to defend themselves against an invading enemy?

But from a military standpoint also it must be recognized that it is to the benefit of the populations to impose on them the conditions contained in Articles 9 and 10, which they must satisfy if they wish to take up arms. For it is an undeniable fact that to lead undisciplined and unorganized troops into the fire is to lead them to butchery.

And finally, these two articles, laid down in a conventional act, would have a still further advantage: that of convincing small States of the necessity of organizing their national armed forces in the most efficient manner in advance and in time of peace.

The delegate from the Netherlands is therefore of opinion that it is to the interest of all the peoples to preserve the two articles.

Article 9 is unanimously adopted, as is also Article 10, the delegate from Switzerland having stated that his vote will depend on the action taken on the article proposed by Sir **JOHN ARDAGH**.

Article 11 is taken up and unanimously adopted, the **PRESIDENT** having declared that there will be laid before the drafting committee a proposition from his Excellency Mr. **BEERNAERT** tending to connect this provision to those relating to prisoners of war:

The armed forces of the belligerent parties may consist of combatants and non-combatants. In case of capture by the enemy, both shall enjoy the rights of prisoners of war.

<sup>1</sup> See the text on the following page.



[122] The **President** recalls the fact that there remain to be discussed the additional articles proposed by General Sir **JOHN ARDAGH** and Article E (new) of the Swiss amendments.

He reads:

1. From the proposition of Sir **JOHN ARDAGH**:

Nothing in this chapter shall be considered as tending to lessen or abolish the right belonging to the population of an invaded country to fulfill its duty of offering by all lawful means, the most energetic patriotic resistance against the invaders.

2. From the article proposed by the Swiss delegation, worded thus:

No acts of retaliation shall be exercised against the population of the occupied territory for having openly taken up arms against the invader.

The **PRESIDENT** asks the delegate from Great Britain whether the insertion in the minutes of his own declaration and that of his Excellency Mr. **BEERNAERT** would not satisfy him.

General Sir **John Ardagh** prefers to have Article 11 followed by an article worded as he has proposed. If, however, the subcommission is against his wish he will not insist, but he will ask that the article proposed by him be submitted to a vote.

Colonel **Künzli** delivers the following address:

The Swiss delegation had prepared amendments to Articles 9 and 10, but it will not deposit them and will join in the proposition of General **ARDAGH**. The declaration made by the **PRESIDENT** is certainly of great value but it does not afford us the necessary guaranties, for it will after all be the text of the convention that will decide.

I realize that war has its needs, its exigencies, and even its inevitable cruelties. I am not one of those who believe that the course of future wars can be regulated on paper to its utmost details. History teaches us that circumstances are often stronger than men and stronger even than the best will of generals. War will remain war, with all its miseries, but will also bring out the highest qualities of man. Since we cannot prevent the miseries of war, let us at least try to diminish them. On this subject I will take the liberty of expressing a few reflections.

We are approaching the end of a century. It will be characterized in the history of the world as a century of great wars and of great political events, but it will also have the credit and glory of having made progress in science such as the world never saw arise before.

Our century has seen human blood flow in torrents, but on the other hand it has dressed many physical and moral wounds by means of the progress of science, and above all it has improved the economic conditions of life. But progress and science have had still another effect. Assisted by easy communications, which multiply the relations among peoples, they have created a public opinion which is won over to peaceful and humanitarian ideas and which propagates them far and wide.

This movement, modest in its beginning, comparable to a small brook, acquired the force of a torrent as soon as it met the powerful support of an august sovereign who, with his strong hand, planted on earth, as an advance sign of

the twentieth century, the standard of peace and humanitarian ideas. Do not pass lightly in the order of the day on this movement. As it is not within your power to close up the temple of Janus forever, at least do not expose yourselves to the reproach of having maintained in our enlightened days usages and customs of war which no longer belong to our time. We are not working here for the advantage of some and the injury of others. None of us knows in advance under what circumstances this convention may become applicable to his own country. Let us therefore perform a work which will be acceptable to all. Good and bad times alternate here on earth. All the nations which are represented here by so many distinguished and celebrated men, have had days of good and of bad fortune during our century.

Historians and thinkers have often asked the question whether nations were greater at the pinnacle of success than in the days of adversity, when higher morality became evident and the whole people rose in a mass to defend its soil.

And if you will allow me to cite an example to you, I will ask you whether the most glorious epoch of the country in which we are enjoying such generous hospitality was not the one in which it had to sustain a long and arduous struggle against a powerful invader, when the whole Dutch people fought with a valiance and perseverance without parallel for its independence, freedom, and convictions? That was the great epoch in which arose WILLIAM OF ORANGE-NASSAU and other great men.

On taking into account the lessons of history, we arrive at the conviction [123] that we must at least take a step toward improving the usages of war.

The Brussels articles introduce nothing new; they do nothing but preserve, confirm, and codify the customs of war, as they were formed in the last wars.

I ask you for but one single innovation: do not punish love of country; do not adopt rigorous measures against peoples who rise in a mass to defend their soil.

At the beginning of this century we had in our country several *levées en masse* of the people in certain mountainous regions, and a similar action of much more importance occurred in a mountainous country which is a neighbour of ours. They fought in open combat; the stragglers were not struck down and the sick and wounded were not killed. Not only able-bodied men but also old men, children, and women took part in the battles.

You will say that this was an excess of patriotism. Perhaps, but it was an excess which delights the heart and which may occur again. You will understand that we cannot subscribe to a convention which would subject part of the population to martial law and courts-martial. We are of opinion that love of country is a virtue which should be cultivated and not suppressed.

I recommend to you the adoption of the proposition of General ARDAGH.

The **President** answers that it has never been a question of setting bounds to the patriotic virtues of peoples.

He repeats again that neither the Conference of Brussels of 1874 nor that of The Hague, in codifying the laws and customs of war, could accomplish an impossible task, namely: to codify the heroic acts of individuals or populations. Our task is much simpler: we wish to save the life and property of the *weak*, the *unarmed*, and the *inoffensive*, but we by no means wish either to prescribe laws for heroes or to curb the impulses of patriots.

Colonel **Gross von Schwarzhoff** declares that he cannot indorse the amendment of General Sir **JOHN ARDAGH**.

At first sight the proposition appears harmless, almost anodyne, as it speaks only of lawful means. But what are lawful means? According to him, they are only those which conform to the conditions prescribed in Articles 9 and 10.

But if the proposition did not contemplate anything else it would be absolutely superfluous. However, the insistence with which this additional article is defended, and especially the eloquent words which Colonel **KÜNZLI** has devoted to it, have demonstrated in the opinion of Mr. **GROSS VON SCHWARZHOFF** that something else is seen therein and that it is desired to amplify the sense of Articles 9 and 10.

This address having opened up a discussion on the very substance of the two articles, the delegate from Germany wishes to specify his views of the matter.

The subcommission has almost reached the end of its first task. The many decisions which it has adopted have been drawn up in a spirit of humanity and for the purpose of mitigating the evils of invasion for the inhabitants. A tacit condition exists common to all the provisions: that is that the population shall remain peaceful; if this condition is not fulfilled, most of the guaranties provided in behalf of the inhabitants lose their reason for existence. Does this mean that it is desired to limit patriotism or to prohibit brave people from taking part in the defense of their native soil?

By no means. The delegate from Germany would be the last to disregard these sacred rights. But nothing prevents patriots from entering the ranks of the army, or, if the organization prepared in time of peace is too restricted, from organizing among themselves, independently of the army proper. Article 9 recognizes their rights as belligerents if they fulfill certain conditions, which surely have nothing excessive about them. Is it then so difficult to find a man who will lead the movement, a mayor, an official, a former soldier? Some kind of a command will always be established. Crowds can accomplish nothing unless commanded. Is it so difficult, moreover, to hoist some distinctive sign? A mere arm badge will suffice. Is it too much to demand that they bear arms openly and that they observe the laws of war, a thing which they expect and of which they are assured on the part of their adversaries? Article 9 ought therefore to amply suffice, for it does not trammel patriotism in any manner.

However, a step further was taken in voting for Article 10 which accords the rights of belligerents to the population of an unoccupied territory on the sole condition that it respect the laws of war. It would be preferable from every standpoint to require here also a distinctive sign and the open bearing of arms. Otherwise the regular troops will find themselves in an unfavorable situation, being unable to tell whether they have before them peaceful peasants [124] or enemies ready for combat; the long range of modern weapons renders this point still more important.

The German delegate frankly admits that he has grave objections to make to this article; but, in a spirit of conciliation and in order not to raise insurmountable difficulties, he thought he might remain silent and refrained from proposing its abolition.

However, now that it is desired to broaden the principles involved therein, he finds himself obliged to say that the concessions should stop here.

And since we are speaking of humanity, it is time to remember that soldiers

also are men, and have a right to be treated with humanity. Soldiers who, exhausted by fatigue after a long march or a battle, come to rest in a village have a right to be sure that the peaceful inhabitants shall not change suddenly into furious enemies.

However, leaving aside these considerations, let us regard the matter from a practical standpoint and endeavor to come to an understanding. To this end Mr. GROSS VON SCHWARZHOFF reads a passage from the proceedings of the Brussels Conference of 1874 in which the federal Colonel HAMMER recognizes that the interests of large armies imperiously demand security for their communications and for their radius of occupation, and that a conciliation of these interests and those of the invaded peoples is impossible.

The delegate from Germany asks nothing more than the eminent compatriot of the Swiss delegates asked in 1874, namely, that those questions in regard to which an understanding is impossible be passed over in silence.<sup>1</sup>

Colonel Gilinsky says that he endorses the opinion expressed by Colonel GROSS VON SCHWARZHOFF, that the necessities of war must be reckoned with.

The inhabitants who fight openly in an unoccupied territory are recognized as belligerents. Article 10 affords full power to the whole nation to fight, under the conditions prescribed, against the invader of its country. However, this right cannot be granted to the inhabitants of an occupied territory who attack the lines of communication, for without lines of communication an army cannot subsist.

Mr. Rahusen indorses the view of the German delegate. While doing homage to the sentiment which inspired the proposition of Sir JOHN ARDAGH, he does not think that his amendment can be inserted as an article in the convention.

No one will deny the right of a people to rise against an invading army, but the direct consequence is that it becomes a belligerent. It is optional with the population as to whether or not it conforms to the conditions which constitute the status of a belligerent, but it will have to bear the consequences of not doing so.

The President states that Article E of the Swiss delegation is withdrawn, Colonel KÜNZLI having recommended the adoption of the proposition of Sir JOHN ARDAGH.

General Sir John Ardagh insists that his proposition be inserted as a separate article and that it be submitted to a vote.

Colonel Künzli answers the remarks of Colonel GROSS VON SCHWARZHOFF. The latter cited Colonel HAMMER, but subsequently at the Brussels Conference the President of the Swiss Confederation, Mr. WELTI, gave his opinion on the subject and raised grave objections to Articles 9 and 10.

Mr. Léon Bourgeois desires to define the situation. He finds that the sub-commission is in agreement with Sir JOHN ARDAGH as to the main issue, while Messrs. KÜNZLI and GROSS VON SCHWARZHOFF have one and the same idea. Nothing should lessen the guaranties which the law of nations gives to populations when they resist the invader.

How may the discussion then be summed up?

It is a question of determining whether it is better to insert this idea in the text in the form of an article, or be content with the declaration of the

<sup>1</sup> See *Actes de la Conférence de Bruxelles 1874*, p. 163.

PRESIDENT, which would be inserted in the final protocol. This latter mode of procedure would afford him adequate satisfaction. But in case it should not be adopted, the vote on the proposition of Sir JOHN ARDAGH would appear to him necessary. However, the wording of the article, as well as the place to be assigned to it, would give rise to many difficulties.

It seems expedient to him to have the commission declare that it proposes to insert the declaration of the PRESIDENT in the final protocol.

His Excellency Mr. **Beernaert** states with satisfaction that the delegate [125] from France supports his view. He had as a matter of fact asked that

the declaration of Mr. MARTENS be entered not only in the minutes of the meeting but also either in the final protocol or in the international act which is to crown the work of the Conference.

The **President** says it is understood that his declaration will remain as *an official act of the Conference*.

Jonkheer **van Karnebeek** declares that he will not be satisfied with the declaration of Mr. MARTENS unless the commission expressly declares itself in favor of adopting it.

Mr. **Beldiman** wishes to add that if they continue to insist that the proposition of Sir JOHN ARDAGH be inserted as an article, the whole work of the subcommission will be imperiled. This article does not appear to him of sufficient importance to risk causing the work to fail.

The **President** consults the subcommission as to the action which should be taken on his declaration. It is the same in meaning as the proposition of Sir JOHN ARDAGH, but with the difference that it implies the impossibility of providing for all cases.

The declaration of the PRESIDENT is adopted as an official act of the subcommission, and it will figure as such in the records of the Conference.

On an observation by Mr. **Miyatovitch**, the **President** says that the adoption of his declaration will not affect the decision to be reached in regard to the proposition of Sir JOHN ARDAGH.

His Excellency Mr. **Beernaert** says that the proposition of the British delegate meets with general approval, and especially his own, but as it is agreed that the declaration which has just been officially and unanimously admitted has the same sense, it seems to him that Sir JOHN ARDAGH might give it up.

Mr. **Bille** remarks that it will be a mistake to vote on the proposition of Sir JOHN ARDAGH, for as the subcommission has really accepted the proposition of the PRESIDENT as sufficient to confirm its opinion on the subject, it does not need to pass a second time on the same idea presented in the form of the ARDAGH amendment.

Colonel **Künzli** expresses a positive wish that the commission take a vote on the amendment of General ARDAGH.

Baron **Bildt** explains why the Swedish and Norwegian delegation will refrain from voting.

It approves the sense of the article but deems it inopportune to insert it.

General **den Beer Poortugael** indorses this view.

Mr. **Beldiman** declares that in voting against the insertion of the article, it is understood that the Roumanian delegation does not disapprove the substance thereof. It is afraid that by insisting too much on a question of form the agreement already established may be jeopardized.

His Excellency Count **Nigra** requests the **PRESIDENT** to ask Sir **JOHN ARDAGH** whether the latter would not be satisfied to have his article appear in the final protocol beside and as a confirmation of the declaration of the President.

The **President** asks the English delegate if he will accept the proposition of his Excellency Count **NIGRA** or if he insists on the adoption of his article.

General Sir **John Ardagh**, after having ascertained that only the Swiss delegate and himself would vote to the latter effect, thinks it his duty to withdraw his article out of a spirit of conciliation, inasmuch as the principle involved has met unanimous approval.

Colonel **Gross von Schwarzhoff** thinks he ought to repeat that it is by no means, in his opinion, a question merely of form, but a question of principle. The insistence placed upon the insertion of the proposition of Sir **JOHN ARDAGH** in the text itself or in the protocol proves as a matter of fact that there is some hidden purpose in view and that it is desired to enlarge the facilities of defense given to the inhabitants by Articles 9 and 10.

The **President** concludes that Sir **JOHN ARDAGH**'s article will be inserted in the record, as well as all observations and restrictions which have been made on this subject.

This suggestion is unanimously approved by the subcommission.

Captain **Crozier** calls the attention of the assembly to a discrepancy existing between Article 55 as voted for by the subcommission and Article 10 adopted by the first subcommission.

He would like to know the opinion of his colleagues regarding the interpretation of Article 55.

His Excellency Mr. **Beernaert** having remarked that the subcommission cannot reverse a vote already taken, it is decided, on the proposition of Colonel **GROSS VON SCHWARZHOFF**, that this question shall be submitted to the drafting committee.

[126] The **President** states that the first reading of the articles of the draft of the Brussels Declaration having been completed, the subcommission will proceed as soon as possible to the second reading.<sup>1</sup>

The meeting adjourns.

<sup>1</sup> See in annex D the text of the draft of 1874 and the text adopted on first reading by the subcommission.

# TWELFTH MEETING

JULY 1, 1899

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Mr. **Martens** presiding.

The minutes of the eleventh meeting are read and adopted.

The **President** gives an account of the mission which has been intrusted to the drafting committee. This committee has revised the articles voted on at the first reading and has remodeled the text of some of them. The **PRESIDENT** states with satisfaction that a unanimous agreement has been reached as to the wording of the articles, except as regards Article 59 concerning which General **ZUCCARI** has made some reservations.

The report of Mr. **ROLIN**<sup>1</sup> having been distributed in the form of proof sheets to the members of the subcommission, the **PRESIDENT** requests the delegates to indicate to the reporter as soon as possible the changes which they may desire to have introduced in his report, which will then be submitted to the Commission in plenary session.

This mode of procedure is adopted.

His Excellency Mr. **Beernaert** congratulates Mr. **ROLIN** on his remarkable work. He observes, however, that certain passages are not in harmony with Mr. **MARTENS'** important declaration which the commission has adopted as its own.

Colonel **Gross von Schwarzhoff** likewise asks that some modifications be made in the report, the substance of which he will make known to the reporter.

Mr. **Rolin** will take account of these observations, especially the passage of his report referred to by Mr. **BEERNAERT** and relating to the old Articles 9 and 10.

The **President** says that the committee will be intrusted with drafting, with a view to the conclusion of a convention, a statement of the obligation which will be contracted by the States with respect to the adoption of uniform rules regarding the laws and customs of war. The preamble to be prepared by the committee will be submitted to the approval of the Commission.

The second reading of the articles is now taken up, the text unanimously proposed by the drafting committee serving as a basis.<sup>2</sup>

Mr. **Rolin**, reporter, reads this text, pointing out the changes made by this committee in the text adopted at the first reading, and the reasons for these changes.

Article 1 is adopted with the intercalation, proposed by Sir **John Ardagh**, of the words "and volunteer corps" after "militia" in the last paragraph.

<sup>1</sup> See *ante*, p. 415.

<sup>2</sup> See *ante*, p. 434.

Articles 2, 3, 4 and 5 are adopted.

Article 6 is adopted; the second sentence of the first paragraph will be worded as follows on the motion of Messrs. **Renault** and **Beldiman**: "The tasks shall not be excessive and shall have no connection with the operation of the war."

Article 7 is adopted with the omission, proposed by his Excellency Mr. **Beernaert**, of the words "and as a general principle" in the second paragraph.

Articles 8, 9, 10, 11, 12, 13, 14 and 15 are adopted. In the last article the words "the necessary facilities" are replaced by the words "every facility."

Articles 16 and 17 are adopted. Following a remark made by Mr. [127] **Ariga** and seconded by his Excellency Mr. **Beernaert**, it is decided, in order to avoid any misunderstanding, to substitute the words "their country's" for the term "national" in Article 17.

Articles 18, 19, 20, 21 and 22 are adopted.

With regard to Article 23, letters *b* and *c*, Mr. **Bihourd** points out that it is *treachery* that it is desired to prohibit rather than the act of killing, with which should be classed the act of wounding.

Mr. **Rolin** calls the attention of the subcommission to the word "especially" placed at the beginning of the article, from which it is shown that the object of the provision is by no means to specify in advance everything that is prohibited. The act of illtreating any person or making him prisoner by *treachery* is likewise prohibited.

It is nevertheless decided to introduce under these two letters the words "or wound" after "to kill."

On motion of his Excellency Mr. **Beernaert**, letter *g*, which had been abolished by the drafting committee, is restored as follows: "(*g*) to destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war."

Article 23, thus modified, is adopted.

Articles 24, 25, 26, 27 and 28 are adopted.

In Article 28 the words "or place" are inserted after "town" at the suggestion of his Excellency Count **Nigra**.

With regard to Article 29, his Excellency Mr. **Beernaert** remarks that the new wording is broader than that adopted at the first reading, perhaps even too broad, since the words "zone of operations" might give rise to different interpretations.

Colonel **Gross von Schwarzhoff** says that by "zone of operations" must be understood the territory where the army is either marching or at rest, including the environs in which this army exercises certain influence through the range of its weapons, by its patrols, or by means of small reconnoitering expeditions.

His Excellency Mr. **Beernaert**, while pointing out that the definition given by Colonel **GROSS VON SCHWARZHOFF** relates in reality to the territory in which an army exercises actual authority, does not insist.

Article 29 is adopted.

Articles 30, 31, 32 and 33 are adopted. The words "under all conditions" have been omitted from Article 33 by the drafting committee and appear by mistake in the printed text. This omission is upheld.

Articles 34 to 44, inclusive, are adopted.

Article 45 is adopted with the following wording: "It is forbidden to



compel the population of occupied territory to swear allegiance to the hostile Power."

Articles 46 to 50, inclusive, are adopted.

Article 51 is adopted with the omission, on the motion of Mr. **Beldiman**, of the useless words "of contributions" in the second paragraph.

Article 52 is adopted.

In connection with Article 53, Mr. **Rolin** mentions a proposition which was communicated to him by Colonel **VON SCHNACK**, advocating the insertion at the beginning of this article of the words "of invasion or occupation" instead of "occupation." It is certain, as a matter of fact, that this article does not concern solely the *occupant* in the sense of Article 42.

Colonel **Gross von Schwarzhoff** says it is difficult to realize the scope of this modification at first sight. It appears to him nevertheless that it would place in doubt the whole system of the articles of the third section, which would have to be revised if it were desired to take into account the distinction between the invader and the occupant. The first article of this section, that is Article 42, gives a quasi-juridical definition of the term "occupation," but in the majority of the following articles the words "occupied, occupant, and occupation" are used in a broader and so to speak military sense, which comprises at once invasion and occupation.

By the addition of the words "or invades" to the words "which occupies" in a single one of these articles, doubts would arise as to whether the other articles, which speak only of occupation, are to apply likewise to the period of invasion.

An answer might be given in the negative, and this would warrant the *invader* for instance in forcing the population to take part in the operations against its country.

If it is not desired to refer the matter to the drafting committee, it would be very useful to state in the report that there was no intention of making any distinction between the invader and the occupant.

[128] Mr. **Rolin** recognizes that the proposed modification might in fact give rise to difficulties, and Colonel **von Schnack** withdraws his proposition.

This article, in the second paragraph of which the words "even though" are substituted for the word "although," gives rise to the explanation furnished by Mr. **ROLIN**, following observations by Messrs. **Motono**, **Veljkovitch** and General Sir **John Ardagh**, to the effect that, in the cases contemplated by this article the belligerents do not acquire the ownership of things belonging to private individuals and that it is a question only of a seizure giving rise to restitution if possible and to indemnity if the occasion arises; only this indemnity remains in abeyance until the conclusion of peace.

Article 53 is adopted.

Articles 54 to 58, inclusive, are adopted.

With regard to Article 59, Captain **Crozier** asks what rule is to govern the status of the sick and wounded who do not belong to the adversary and who are brought into the neutral territory. Can they take part again in the operations of the war?

Mr. **Rolin** answers that there was no thought of limiting the right of the neutral to allow free passage through its territory to the sick and wounded of the belligerents on their way to their own country; but it is important that

the neutral should not make any distinctions in the granting of this favor.

His Excellency Mr. **Beernaert** points out that it is necessary to take into account three different cases:

1. That in which the victor asks that his own sick and wounded be allowed to pass through the territory of the neutral.

2. That in which he also brings sick or wounded prisoners of war in order to have them pass through the neutral territory.

3. That in which he intrusts to the care of the neutral the sick or wounded of his own army who are not able to be transported any further.

The neutral is authorized to allow the former to pass; but the sick or wounded prisoners must be delivered to him. Likewise he must guard the sick or wounded of the victorious army who may be intrusted to him, and in order to express this rule the words "belonging to the hostile party" might be omitted from the second paragraph.

Mr. **Rolin** objects that there would then be a discrepancy between the first and second paragraphs, which discrepancy would be still further enhanced by the words "brought under these conditions" appearing at the head of the second paragraph. It would really amount to a withdrawal of any privilege to pass through.

Colonel **Gross von Schwarzhoff** remarks that the case contemplated by his Excellency Mr. **BEERNAERT** under number 3 can occur but rarely; that is to say, when the condition of a sick or wounded person becomes worse during transportation.

Following an exchange of views on this subject, in which Messrs. **Asser** and Chevalier **Descamps** take part, the text of the article is maintained, save the addition of the following sentence with a view to providing for the case pointed out by his Excellency Mr. **BEERNAERT**: "The same duty shall devolve on the neutral State with regard to wounded or sick of the other army who may be committed to its care."

Article 60 is adopted.

The **President** expresses hearty thanks to the reporter for his remarkable work and to the members of the subcommission for their friendly cooperation and the spirit of conciliation which they have caused to preside over the difficult labors of the subcommission, now brought to a successful conclusion.

The meeting adjourns.

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## Annex A

[129]

**New wording of Articles 1 to 6 (combined with Articles 40 to 42) proposed by Mr. Rolin, reporter**

**TITLE OF THIS CHAPTER:** *On the occupation of hostile territory; contributions and requisitions*

**ARTICLE 1.** *(Already voted. As in the Brussels text.)*

ARTICLE 2. (*Already voted, but whose wording might on second reading be agreed upon as follows:* "The occupant shall take all the measures in his power to restore and ensure public order and safety.")

ARTICLE 3. *New wording proposed:* "The existing laws remain in force in the occupied territory and if the occupant is induced, owing to the necessities of the war, to modify, suspend, or replace them, these measures shall be only of a purely provisional character, limited according to the extent and duration of the occupation."

ARTICLE 4. *The subcommission voted provisionally for the suppression of this article.*

ARTICLE 5.<sup>1</sup> *New wording proposed:* "If the occupant collects the taxes for his own benefit he thereby incurs the obligation to defray the expenses of the administration of the occupied territory to the same extent as the legitimate Government is so bound."

ARTICLE 5a.<sup>1</sup> *Article proposed as a substitute for Article 41 of the Declaration of Brussels:* "If the occupant levies extraordinary contributions, either by way of fines, or as an equivalent for unpaid taxes or payments not furnished in kind, he shall proceed so far as possible only in accordance with the local rules governing incidence and assessment."

"Contributions shall be imposed only on the order and on the responsibility of the commander in chief or the superior civil authority established at the place."

"For every contribution a receipt shall be given to the person furnishing it."

ARTICLE 5b.<sup>2</sup> *Article proposed as a substitute for Articles 40 and 42 of the Declaration of Brussels:* "Payments in kind and in general all requisitions levied against communes and inhabitants shall be commensurate with the generally recognized necessities of war, in proportion to the resources of the country, and of such a nature as not to imply the obligation on the part of the population to take part in operations of war against their country."

"Requisitions shall be made only with the authorization of the commander in chief in the territory occupied."

"Contributions in kind shall, as far as possible, be paid for in cash, and if not vouchers shall be given."

ARTICLE 6. *New wording in accordance with the conclusions of his Excellency Mr. BEERNAERT:* "If the army which invades or occupies a territory proceeds to seize movable objects which may be used for the operations of the war, such as railway or telegraph plant, steamers and other ships (apart from cases governed by maritime law), arms and munitions of war, this seizure shall never have any other character than that of a sequestration so far as concerns those of the objects which are the property of companies or of private persons."

[130] "Especially the plant of railways coming from neutral States, whether the property of those States or of companies or of private persons, shall be sent back to them as soon as possible and shall not be used for military operations."

Articles 7 and 8. (*Without modification.*)

<sup>1</sup> These two articles, 5 and 5a, are to be connected with Article A proposed by his Excellency Mr. BEERNAERT.

<sup>2</sup> This Article 5b is to be connected with Article B proposed by his Excellency Mr. BEERNAERT.

## Annex B

**Texts proposed to the subcommission by the drafting committee, which met June 13 and 16 under the presidency of his Excellency Mr.**

**Léon Bourgeois**

In the course of its last meeting the subcommission appointed a drafting committee composed of Messrs. BELDIMAN, Colonel à COURT, Colonel GROSS VON SCHWARZHOFF, Colonel GILINSKY, LAMMASCH, RENAULT, General ZUCCARI and ROLIN, the latter as reporter.

At the end of the same meeting, in view of the divergence of views which had manifested itself on the subject of the wording of the new articles intended to replace Articles 40, 41 and 42 of the Declaration of Brussels draft, the subcommission, on the motion of Messrs. BELDIMAN and LÉON BOURGEOIS, entrusted to this same committee the task of formulating a new wording of these articles; and the committee was instructed to set forth in a new text only the points on which an agreement seemed possible.

The committee met twice. All the members designated took part in its deliberations. Mr. BOURGEOIS kindly joined the committee, as well as Messrs. BEERNAERT, VAN KARNEBEEK, and ODIER.

After a thorough discussion under the presidency of Mr. LÉON BOURGEOIS, and following exchanges of views with Messrs. BEERNAERT, VAN KARNEBEEK, and ODIER, the committee unanimously agreed to present to the subcommission the text of four articles relative to contributions and requisitions. These new texts are preceded by a very slightly altered wording of Article 5 relative to established taxes, which was already voted on the first reading.

## DRAFT PROPOSED BY THE COMMITTEE

ARTICLE 5 (*already voted*)

If, in the territory occupied, the occupant collects the taxes, dues, and tolls imposed for the benefit of the State, he shall do so, as far as is possible, in accordance with the rules of assessment and incidence in force, and shall in consequence be bound to defray the expenses of the administration of the occupied territory to the same extent as the legitimate Government was so bound.

## ARTICLE A

In addition to the taxes mentioned in the above article, the occupant can levy other money contributions in the occupied territory only for the needs of the army or of the administration of the territory in question.

## ARTICLE B

No general penalty, pecuniary or otherwise, shall be inflicted upon the [131] population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible.

## ARTICLE C

No contribution shall be collected except under a written order, and on the responsibility of a commander in chief.

The collection of the said contribution shall only be effected as far as possible in accordance with the rules of assessment and incidence of the taxes in force.

For every contribution a receipt shall be given to the contributors.

#### ARTICLE D

Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the population in the obligation of taking part in the operations against their country.

Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied.

Contributions in kind shall, as far as possible, be paid for in cash, and if not, vouchers shall be given.

#### Annex C

**Report addressed to the subcommission by the drafting committee, which met June 17, 1899, at two o'clock, under the presidency of Mr. Martens, respecting the text of Articles 6, 7 and 8 of the Declaration of Brussels draft and the proposed modifications or additions**

In its meeting of June 17, 1899 (morning), the subcommission, after having unanimously adopted the first paragraph of Article 6 of the Brussels draft, referred to the drafting committee the amendments and additional articles proposed on the subject of the second paragraph of the said article, charging it to review at the same time Articles 7 and 8 of the draft with a view to eventual modifications.

The committee met the same day under the presidency of Mr. MARTENS. All of its members were present, as well as Messrs. BEERNAERT, BILLE, and ODIER.

With regard to the *second paragraph of Article 6*, the committee, after a thorough discussion, recognized that if it was desired to give too exact a wording it would probably be impossible to reach an agreement, and that it therefore seemed best to preserve, save for some modifications of detail, the text of the Brussels draft.

The committee then admitted the principle of the amendment proposed by Mr. BILLE by deciding to say "land telegraphs, *including landing cables*."

The committee did not believe it expedient on this occasion to deal incidentally with the nature of the rights of the littoral State on the territorial sea and with the extent of the latter, and it is for this reason that it did not accept the last words of Mr. BILLE's amendment.

It was agreed, on the motion of Mr. LAMMASCH, that the article was to apply equally to telephones.

[132] Therefore the committee has the honor to propose that the subcommission adopt the following wording for the second paragraph of Article 6:

Railway plant, land telegraphs, including landing cables, telephones, steamers and other ships, apart from cases governed by maritime law, as well as depots of arms and generally all kinds of munitions of war, although belonging to companies or to private persons, are likewise material which may serve for military operations, and which cannot be left by the army of occupation at the disposal of the enemy. Railway plant, land telegraphs, including landing cables and telephones, as well as steamers and other ships above mentioned shall be restored and compensation fixed when peace is made.

It must be stated to the subcommission that the committee did not think it necessary to specially stipulate, with regard to the application of this article, that the belligerent who makes a seizure is obliged to give a receipt as in the case of requisitions; but the committee was nevertheless of the opinion that the fact of the seizure must clearly be stated in one way or another, if only to furnish the owner of the objects seized with an opportunity to claim the indemnity expressly provided for in the text.

The motion of Mr. ODIER to have it stated that "railway plant, even when belonging to the enemy State, shall be restored when peace is made," was not accepted. The committee considered this question as one of those which must be settled by the treaty of peace.

The committee likewise found before it a proposal of his Excellency Mr. BEERNAERT concerning neutral railway plant, prescribing the immediate restitution of this material by the belligerent, and forbidding the latter to use it for the needs of the war. In this case as in that of Article 6 it appeared to the committee that in view of the necessities of war a wording too precise and minute would tend to cause difficulties rather than to avoid them. Consequently, the text proposed by Mr. BEERNAERT was slightly modified and the committee suggests making it the object of a special article worded as follows:

The plant of railways coming from neutral States, whether the property of those States or of companies or of private persons, shall be sent back to them as soon as possible.

Concerning *Article 7* of the Brussels draft, the committee thought it might be adopted without any modification.

Finally, as to *Article 8*, the committee suggests adopting it with only a very slight modification at the end of the article relating to proceedings by the competent authorities. In order not to raise here a question of competence the committee proposes to redraft the second paragraph of this article in the following terms:

All seizure or destruction of, or wilful damage to, institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.

With regard to the first paragraph of this article, the committee was informed that an explanation had been requested by General MIRZA RIZA KHAN concerning the scope of the expression "institutions dedicated to religion." In accordance with what was clearly said in 1874 at Brussels (*Protocol No. 18*), the

committee considers that there is no distinction to be made on this subject between the various religions, and that the expression referred to therefore equally applies to *mosques*.

All of the decisions of the committee mentioned in the present report were unanimous.

## Annex D

[133]

### TEXT OF THE PROJECT OF THE DECLARATION OF BRUSSELS OF 1874

### TEXT ADOPTED ON FIRST READING BY THE SUB- COMMISSION <sup>1</sup>

#### ON MILITARY AUTHORITY OVER HOSTILE TERRITORY

##### ARTICLE 1

Territory is considered occupied when it is actually placed under the authority of the hostile army.

The occupation extends only to the territory where such authority has been established and can be exercised.

##### ARTICLE 2

The authority of the legitimate Power being suspended and having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore and ensure, as far as possible, public order and safety.

##### ARTICLE 3

With this object he shall maintain the laws which were in force in the country in time of peace, and shall not modify, suspend or replace them unless necessary.

##### ARTICLE 4

The functionaries and employees of every class who consent, on his invitation, to continue their functions, shall enjoy his protection. They shall not be dismissed or subjected to disciplinary punishment unless they fail in fulfilling the obligations undertaken by

##### ARTICLE 1

Territory is considered as occupied when it is actually placed under the authority of the hostile army.

The occupation extends only to the territory where such authority has been established and can be exercised.

##### Article

The authority of the legitimate Power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore and ensure, as far as possible, public order and safety, while respecting unless absolutely prevented the laws in force in the country.

(Articles 2 and 3 have been combined in the above text.)

Suppressed.

<sup>1</sup> N. B. The word "article" is written in italic letters when the original text of Brussels has been changed by the subcommission.

them, and they shall not be prosecuted unless they betray their trust.

#### ARTICLE 5

The army of occupation shall only collect the taxes, dues, duties and tolls imposed for the benefit of the [134] state, or their equivalent, if it is impossible to collect them, and, as far as is possible, in accordance with the existing forms and practice. It shall devote them to defraying the expenses of the administration of the country to the same extent as the legitimate Government was so obligated.

#### ARTICLE 6

An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for the operations of the war.

Railway plant, land telegraphs, steamers and other ships, apart from cases governed by maritime law, as well as depots of arms and, generally, all kinds of war material, even if belonging to companies or to private persons, are likewise material which may serve for military operations and which cannot be left by the army of occupation at the disposal of the enemy. Railway plant, land telegraphs, as well as steamers and other ships above mentioned shall be restored and compensation fixed when peace is made.

#### ARTICLE 7

The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates

#### *Article*

If, in the territory occupied, the occupant collects the taxes, dues, and tolls imposed for the benefit of the State, he shall do so, as far as is possible, in accordance with the rules of assessment and incidence in force, and shall in consequence be bound to defray the expenses of the administration of the occupied territory to the same extent as the legitimate Government was so bound.

#### *Article*

An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the state, depots of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for the operations of the war.

Railway plant, land telegraphs, including landing cables, telephones, steamers and other ships, apart from cases governed by maritime law, as well as depots of arms and generally all kinds of munitions of war, although belonging to companies or to private persons, are likewise material which may serve for military operations, and which cannot be left by the army of occupation at the disposal of the enemy. Railway plant, land telegraphs, including landing cables and telephones, as well as steamers and other ships above-mentioned shall be restored and compensation fixed when peace is made.

#### *Article*

The plant of railways coming from neutral States, whether the property of those States or of companies or of private persons, shall be sent back to them as soon as possible.

#### ARTICLE

The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates



belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.

#### ARTICLE 8

The property of municipalities, that of institutions dedicated to religion, charity and education, the arts [135] and sciences even when State property, shall be treated as private property.

All seizure or destruction of, or wilful damage to, institutions of this character, historic monuments, works of art and science should be made the subject of legal proceedings by the competent authorities.

belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.

#### *Article*

The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences even when State property, shall be treated as private property.

All seizure or destruction of, or wilful damage to, institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.

### WHO SHOULD BE RECOGNIZED AS BELLIGERENTS; COMBATANTS AND NON-COMBATANTS

#### ARTICLE 9

The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions:

1. That they be commanded by a person responsible for his subordinates;
2. That they have a fixed distinctive emblem recognizable at a distance;
3. That they carry arms openly; and
4. That they conduct their operations in accordance with the laws and customs of war.

In countries where militia constitute the army, or form part of it, they are included under the denomination "army."

#### ARTICLE 10

The population of a territory which has not been occupied, who, on the approach of the enemy, spontaneously take up arms to resist the invading troops without having had time to organize themselves in accordance with Article 9, shall be regarded as belligerents if they respect the laws and customs of war.

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In countries where militia constitute the army, or form part of it, they are included under the denomination "army."

#### ARTICLE

The population of a territory which has not been occupied, who, on the approach of the enemy, spontaneously take up arms to resist the invading troops without having had time to organize themselves in accordance with Article 9, shall be regarded as belligerents, if they respect the laws and customs of war.

## ARTICLE 11

The armed forces of the belligerent parties may consist of combatants and non-combatants. In case of capture by the enemy, both shall enjoy the rights of prisoners of war.

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## MEANS OF INJURING THE ENEMY

## ARTICLE 12

The laws of war do not recognize in belligerents an unlimited power in the adoption of means of injuring the enemy.

*Article*

The right of belligerents to adopt means of injuring the enemy is not unlimited.

## [136] ARTICLE 13

According to this principle are especially *forbidden*:

*a.* Employment of poison or poisoned weapons;

*b.* Murder by treachery of individuals belonging to the hostile nation or army;

*c.* Murder of an enemy who, having laid down his arms or having no longer means of defense, has surrendered at discretion;

*d.* The declaration that no quarter will be given;

*e.* The employment of arms, projectiles or material calculated to cause unnecessary suffering, as well as the use of projectiles prohibited by the Declaration of St. Petersburg of 1868;

*f.* Making improper use of a flag of truce, of the national flag or of the military insignia and uniform of the enemy, as well as the distinctive badges of the Geneva Convention;

*g.* Any destruction or seizure of the enemy's property that is not imperatively demanded by the necessity of war.

*Article*

Especially *forbidden* are:

*a.* Employment of poison or poisoned weapons;

*b.* Murder by treachery of individuals belonging to the hostile nation or army;

*c.* Murder of an enemy who, having laid down his arms or having no longer means of defense, has surrendered at discretion;

*d.* The declaration that no quarter will be given;

*e.* The employment of arms, projectiles or material calculated to cause unnecessary suffering, as well as the use of projectiles prohibited by the Declaration of St. Petersburg of 1868;

*f.* Making improper use of a flag of truce, of the national flag or of the military insignia and uniform of the enemy, as well as the distinctive badges of the Geneva Convention;

*g.* Any destruction or seizure of the enemy's property that is not imperatively demanded by the necessity of war.

## ARTICLE 14

Ruses of war and the employment of measures necessary for obtaining information about the enemy and the country (excepting the provisions of Article 36) are considered permissible.

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## SIEGES AND BOMBARDMENTS

## ARTICLE 15

Fortified places are alone liable to be besieged. Open towns, agglomerations of dwellings, or villages which are not defended can neither be attacked nor bombarded.

*Article*

Towns, villages, dwellings, or buildings which are not defended can neither be attacked nor bombarded.

## ARTICLE 16

But if a town or fortress, agglomeration of dwellings or village, is defended, the officer in command of an attacking force must, before commencing a bombardment, except in assault, do all in his power to warn the authorities.

*Article*

The officer in command of an attacking force must, before commencing a bombardment, except in cases of assault, do all in his power to warn the authorities.

## ARTICLE 17

[137] In such cases all necessary steps must be taken to spare, as far as possible, buildings dedicated to art, science, or charitable purposes, hospitals, and places where the sick and wounded are collected provided they are not being used at the time for military purposes.

*Article*

In sieges and bombardments, all necessary steps must be taken to spare, as far as it is possible, buildings dedicated to religion, art, science, or charitable purposes, hospitals and places where the sick and wounded are collected, provided they are not being used at the time for military purposes.

It is the duty of the besieged to indicate the presence of such buildings by distinctive and visible signs to be communicated to the enemy beforehand.

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## ARTICLE 18

A town taken by assault ought not to be given over to pillage by the victorious troops.

*Article*

It is forbidden to give over to pillage a town taken by storm.

## SPIES

## ARTICLE 19

A person can only be considered a spy when, acting clandestinely or on false pretenses, he obtains or endeavors to obtain information in the districts occupied by the enemy, with the intention of communicating it to the hostile party.

*Article*

A person can only be considered a spy when, acting clandestinely or on false pretenses, he obtains or endeavors to obtain information in the territories occupied by the enemy, with the intention of communicating it to the hostile army.

ARTICLE <sup>1</sup>

Thus soldiers not wearing a disguise who have penetrated into the zone of operations of the hostile army, for the

<sup>1</sup> This article corresponds to Article 22 of the draft Declaration of Brussels of 1874.

purpose of obtaining information, are not considered spies.

Similarly, the following are not considered spies: soldiers and civilians, carrying out their mission openly, intrusted with the delivery of dispatches intended either for their own army or for the enemy's army.

To this class belong likewise, persons sent in balloons for the purpose of carrying dispatches and, generally, of maintaining communications between the different parts of an army or a territory.

#### ARTICLE 20

A spy taken in the act shall be tried and treated according to the laws in force in the army which captures him.

#### *Article*

A spy taken in the act shall not be punished without previous trial.

#### ARTICLE 21

A spy who rejoins the army to which he belongs and who is subsequently [138] captured by the enemy is treated as a prisoner of war and incurs no responsibility for his previous acts.

#### *Article*

A spy who, after rejoining the army to which he belongs, is subsequently captured by the enemy is treated as a prisoner of war and incurs no responsibility for his previous acts.

#### ARTICLE 22

Soldiers not wearing a disguise who have penetrated into the zone of operations of the hostile army, for the purpose of obtaining information, are not considered spies.

Similarly, the following should not be considered spies, if they are captured by the enemy: soldiers (and also civilians, carrying out their mission openly) intrusted with the delivery of dispatches intended either for their own army or for the enemy's army.

To this class belong likewise, if they are captured, persons sent in balloons for the purpose of carrying dispatches and, generally, of maintaining communications between the different parts of an army or a territory.

(See above.)

## PRISONERS OF WAR

## ARTICLE 23

Prisoners of war are lawful and disarmed enemies.

They are in the power of the hostile Government, but not in that of the individuals or corps who captured them.

They must be humanely treated.

Any act of insubordination justifies the adoption of such measures of severity as may be necessary.

All their personal belongings except arms shall remain their property.

## ARTICLE 24

Prisoners of war may be interned in a town, fortress, camp, or other place, under obligation not to go beyond certain fixed limits; but they can only be placed in confinement as an indispensable measure of safety.

## ARTICLE 25

Prisoners of war may be employed on certain public works which have no direct connection with the operations in the theater of war and which are not excessive or humiliating to their military rank, if they belong to the army, or to their official or social position, if they do not belong to it.

[139] They may also, subject to such regulations as may be drawn up by the military authorities, undertake private work.

Their wages shall go towards improving their position or shall be paid to them on their release. In this case the cost of maintenance may be deducted from said wages.

## ARTICLE 26

Prisoners of war cannot be compelled in any way to take any part whatever in carrying on the operations of the war.

*Article*

Prisoners of war are in the power of the hostile Government, but not in that of the individuals or corps who captured them.

They must be humanely treated.

All their personal belongings, except arms, horses, and military papers, remain their property.

## ARTICLE

Prisoners of war may be interned in a town, fortress, camp, or other place, under obligation not to go beyond certain fixed limits; but they can only be placed in confinement as an indispensable measure of safety.

*Article*

The State may utilize the labor of prisoners of war according to their rank and aptitude. The tasks cannot be excessive; they can have no connection with the operations of the war.

Prisoners may be authorized to work for the public service, for private persons, or on their own account.

Work done for the State is paid for at the rates in force for work of a similar kind done by soldiers of the national army.

When the work is for other branches of the public service or for private persons, the conditions are settled in agreement with the ministry of war.

The wages of the prisoners shall go towards improving their position, and the balance shall be paid them at the time of their release, after deducting the cost of their maintenance.

(Articles 25 and 26 have been combined in the text above.)

## ARTICLE 27

The Government into whose hands prisoners of war have fallen charges itself with their maintenance.

The conditions of such maintenance may be settled by a reciprocal agreement between the belligerent parties.

In the absence of this agreement, and as a general principle, prisoners of war shall be treated as regards food and clothing, on the same footing as the troops of the Government which captured them.

## ARTICLE 28

Prisoners of war are subject to the laws and regulations in force in the army in whose power they are.

Arms may be used, after summoning, against a prisoner of war attempting to escape. If recaptured he is liable to disciplinary punishment or subject to a stricter surveillance.

If, after succeeding in escaping, he is again taken prisoner, he is not liable to punishment for his previous acts.

## ARTICLE 29

Every prisoner of war is bound to give, if questioned on the subject, [140] his true name and rank, and if he infringes this rule, he is liable to a curtailment of the advantages accorded to the prisoners of war of his class.

## ARTICLE 30

The exchange of prisoners of war is regulated by a mutual understanding between the belligerent parties.

## ARTICLE 31

Prisoners of war may be set at liberty on parole if the laws of their country allow it, and, in such cases, they are

*Article*

The Government into whose hands prisoners of war have fallen is charged with their maintenance.

The conditions of such maintenance may be settled by a reciprocal agreement between the belligerent parties.

In the absence of this agreement, and as a general principle, prisoners of war shall be treated as regards food, quarters and clothing, on the same footing as the troops of the Government which captured them.

*Article*

Prisoners of war are subject to the laws, regulations, and orders in force in the army of the State in whose power they are.

An act of insubordination justifies the adoption of such measures as may be necessary.

Escaped prisoners who are retaken before being able to rejoin their army, or before leaving the territory occupied by the army that captures them, are liable to disciplinary punishment.

Prisoners who, after succeeding in escaping, are again taken prisoners are not liable to any punishment for the previous flight.

## ARTICLE

Every prisoner of war is bound to give, if questioned on the subject, his true name and rank, and if he infringes this rule, he is liable to a curtailment of the advantages accorded to the prisoners of war of his class.

(Suppressed.)

*Article*

Prisoners of war may be set at liberty on parole if the laws of their country allow it, and, in such cases, they are

bound, on their personal honor, scrupulously to fulfill, both towards their own Government and the Government by which they were made prisoners, the engagements they have contracted.

In such cases their own Government ought neither to require of nor accept from them any service incompatible with the parole given.

#### ARTICLE 32

A prisoner of war cannot be compelled to accept his liberty on parole; similarly the hostile Government is not obliged to accede to the request of the prisoner to be set at liberty on parole.

#### ARTICLE 33

Any prisoner of war liberated on parole and recaptured bearing arms against the Government to which he had pledged his honor may be deprived of the rights accorded to prisoners of war and brought before the courts.

#### ARTICLE 34

Individuals in the vicinity of armies but not directly forming part of them, such as correspondents, newspaper reporters, sutlers, contractors, etc., can also be made prisoners. These prisoners should however be in possession of a permit issued by the competent authority and of a certificate of [141] identity.

bound, on their personal honor, scrupulously to fulfill, both towards their own Government and the Government by which they were made prisoners, the engagements they have contracted.

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A prisoner of war cannot be compelled to accept his liberty on parole; similarly the hostile Government is not obliged to accede to the request of the prisoner to be set at liberty on parole.

#### *Article*

Any prisoner of war liberated on parole and recaptured bearing arms against the Government to which he had pledged his honor, or against its allies, may be deprived of the rights accorded to prisoners of war and brought before the courts.

#### *Article*

Individuals who follow an army without directly belonging to it, such as newspaper correspondents, and reporters, sutlers, and contractors, who fall into the enemy's hands and whom the latter thinks fit to detain, shall enjoy treatment as prisoners of war provided they are in possession of a certificate from the military authorities of the army they were accompanying.

#### ARTICLE <sup>1</sup>

An information bureau relative to prisoners of war is instituted, on the commencement of hostilities, in each of the belligerent States, and, when necessary, in neutral countries which have received belligerents in their territory. The function of this bureau is to reply to all inquiries about the prisoners, to receive from the various services concerned all the information necessary to enable it to make out an individual re-

<sup>1</sup> The seven following articles were voted on the first reading by the subcommission on the motion of his Excellency Mr. BEERNAERT.

turn for each prisoner of war. It is kept informed of internments and transfers, as well as of admissions into hospital and deaths.

It is likewise the function of the information bureau to receive and collect all objects of personal use, valuables, letters, etc., found on the field of battle or left by prisoners who have died in hospitals or ambulances, and to forward them to those concerned.

#### ARTICLE

Relief societies for prisoners of war, which are properly constituted in accordance with the laws of their country and with the object of serving as the channel for charitable effort shall receive from the belligerents, for themselves and their duly accredited agents, the necessary facilities in order that they can efficiently perform their humane task within the bounds imposed by military necessities and administrative regulations. Agents of these societies may be admitted to the places of internment for the purpose of distributing relief, as also to the halting-places of repatriated prisoners, if furnished with a personal permit by the military authorities, and on giving an undertaking in writing to comply with all measures of order and police which the latter may issue.

#### ARTICLE

Information bureaus enjoy the privilege of free postage. Letters, money orders, and valuables, as well as parcels by post, intended for prisoners of war, or dispatched by them, shall be exempt from all postal duties in the countries of origin and destination, as well as in the countries they pass through.

Presents and relief in kind for prisoners of war shall be admitted free of all import or other duties, as well as of payments for carriage by State railways.

#### ARTICLE

Officers taken prisoners may receive, through a neutral Power, if necessary,



the full pay allowed them in this position by their country's regulations, the amount to be refunded by their Government.

#### ARTICLE

Prisoners of war shall enjoy complete liberty in the exercise of their religion, including attendance at the services of whatever church they may belong to, on the sole condition that they comply with the measures of order and police issued by the military authorities.

#### ARTICLE

The wills of prisoners of war are received or drawn up in the same way as for soldiers of the national army.

The same rules shall be observed regarding death certificates as well as for the burial of prisoners of war, due regard being paid to their grade and rank.

#### ARTICLE

After the conclusion of peace, the repatriation of prisoners of war shall be carried out as quickly as possible.

### THE SICK AND WOUNDED

#### ARTICLE 35

The obligations of belligerents with respect to the service of the sick and wounded are governed by the Geneva Convention of August 22, 1864, save such modifications as the latter may undergo.

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### ON THE MILITARY POWER WITH RESPECT TO PRIVATE PERSONS <sup>1</sup>

#### ARTICLE 36

[143] The population of occupied territory cannot be forced to take part in military operations against its own country.

#### ARTICLE

The population of occupied territory cannot be forced to take part in military operations against its own country.

#### ARTICLE 37

The population of occupied territory cannot be compelled to swear allegiance to the hostile Power.

#### ARTICLE

The population of occupied territory cannot be compelled to swear allegiance to the hostile Power.

<sup>1</sup> It has been decided that the four articles that form this chapter shall be inserted *before* Article 5 of the text of 1874.

## ARTICLE 38

Family honor and rights, and the lives and property of persons, as well as their religious convictions and their practice, must be respected.

Private property cannot be confiscated.

## ARTICLE 39

Pillage is formally forbidden.

*Article*

Family honor and rights, the lives of persons, and private property, as well as religious convictions and practice must be respected.

Private property cannot be confiscated.

## ARTICLE

Pillage is formally forbidden.

## ON TAXES AND REQUISITIONS

## ARTICLE 40

As private property should be respected, the enemy will demand from communes or inhabitants only such payments and services as are connected with the generally recognized necessities of war, in proportion to the resources of the country, and not implying, with regard to the inhabitants, the obligation of taking part in operations of war against their country.

## ARTICLE 41

The enemy in levying contributions, whether as an equivalent for taxes (see Article 5) or for payments that should be made in kind, or as fines, shall proceed, so far as possible, only in accordance with the rules for incidence and assessment in force in the territory occupied.

The civil authorities of the legitimate Government shall lend it their assistance if they have remained at their posts.

Contributions shall be imposed only on the order and on the responsibility of the commander in chief or the superior civil authority established by the enemy in the occupied territory.

For every contribution a receipt shall be given to the person furnishing it.

## [144] ARTICLE 42

Requisitions shall be made only with the authorization of the commander in the territory occupied.

*Article*<sup>1</sup>

If, in addition to the taxes mentioned in the above article, the occupant levies other money contributions in the occupied territory, this shall only be for the needs of the army or of the administration of the territory in question.

*Article*

No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible.

*Article*

No contribution shall be collected except under a written order, and on the responsibility of a commander in chief.

The collection of the said contribution shall only be effected as far as possible in accordance with the rules of assessment and incidence of the taxes in force.

For every contribution a receipt shall be given to the contributors.

*Article*

Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of

<sup>1</sup> The four new articles adopted by the subcommission will be inserted after Article 5 of the text of 1874.

For every requisition indemnity shall be granted or a receipt delivered.

the country, and of such a nature as not to involve the population in the obligation of taking part in the operations against their country.

Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied.

Contributions in kind shall, as far as possible, be paid for in cash; if not, a receipt shall be given.

## ON PARLEMENTAIRES

### ARTICLE 43

A person is regarded as a parlementaire who has been authorized by one of the belligerents to enter into communication with the other, and who advances bearing a white flag, accompanied by a trumpeter (bugler or drummer) or also by a flag-bearer. He shall have a right to inviolability as well as the trumpeter (bugler or drummer) and the flag-bearer who accompany him.

### *Article*

A person is regarded as a parlementaire who has been authorized by one of the belligerents to enter into communication with the other, and who advances bearing a white flag, accompanied by a trumpeter, bugler, or drummer, or also by a flag-bearer or by an interpreter. He has a right to inviolability as well as the trumpeter, bugler, or drummer and the flag-bearer or interpreter who accompany him.

### ARTICLE 44

The commander to whom a parlementaire is sent is not in all cases and under all conditions obliged to receive him.

It is lawful for him to take all the necessary steps to prevent the parlementaire taking advantage of his stay within the radius of the enemy's position to the prejudice of the latter, and if the parlementaire has rendered himself guilty of such an abuse of confidence, he has the right to detain him temporarily.

He may likewise declare beforehand that he will not receive parlementaires during a certain period. Parlementaires presenting themselves after such a notification, from the side to which it has been given, forfeit the right of inviolability.

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### ARTICLE 45

The parlementaire loses his rights of inviolability if it is proved in a clear and incontestable manner that he has taken advantage of his privileged position to provoke or commit an act of treason.

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[145]

## CAPITULATIONS

## ARTICLE 46

The conditions of capitulations are discussed between the contracting parties.

They must not be contrary to military honor.

Once settled by a convention, they must be scrupulously observed by both parties.

*Article*

The conditions of capitulations are discussed between the contracting parties.

They must take into account the rules of military honor.

Once settled by a convention, they must be scrupulously observed by both parties.

## ARMISTICES

## ARTICLE 47

An armistice suspends military operations by mutual agreement, between the belligerent parties. If its duration is not defined, the belligerent parties may resume operations at any time, provided always that the enemy is warned within the time agreed upon, in accordance with the terms of the armistice.

## ARTICLE 48

The armistice may be general or local. The first suspends the military operations of the belligerent States everywhere; the second only between certain fractions of the belligerent armies and within a fixed radius.

## ARTICLE 49

An armistice must be officially and without delay notified to the competent authorities and to the troops. Hostilities are suspended immediately after the notification.

## ARTICLE 50

It rests with the contracting parties to settle, in the terms of the armistice, what communications may be held between the populations.

## ARTICLE 51

The violation of the armistice by one of the parties gives the other party the right of denouncing it.

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*Article*

An armistice must be officially and without delay notified to the competent authorities and to the troops. Hostilities are suspended immediately after the notification or on a later date fixed.

*Article*

It rests with the contracting parties to settle, in the terms of the armistice, what communications may be held with and between the populations on the theater of war.

*Article*

Any serious violation of the armistice by one of the parties gives the other party the right of denouncing it, and even, in cases of urgency, of recommencing hostilities immediately.

[146]

## ARTICLE 52

A violation of the terms of the armistice by individuals acting on their own initiative only entitles the injured party to demand the punishment of the offenders or, if necessary, compensation for the losses sustained.

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## INTERNED BELLIGERENTS AND WOUNDED CARED FOR BY NEUTRALS

## ARTICLE 53

A neutral State which receives on its territory troops belonging to the belligerent armies shall intern them, as far as possible, at a distance from the theater of war.

It may keep them in camps and even confine them in fortresses or in places set apart for this purpose.

It shall decide whether officers can be left at liberty on giving their parole not to leave the neutral territory without permission.

## ARTICLE

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It may keep them in camps and even confine them in fortresses or in places set apart for this purpose.

It shall decide whether officers can be left at liberty on giving their parole not to leave the neutral territory without permission.

## ARTICLE 54

In the absence of a special convention, the neutral State shall supply the interned with the food, clothing, and relief required by humanity.

At the conclusion of peace the expenses caused by the internment shall be made good.

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At the conclusion of peace the expenses caused by the internment shall be made good.

## ARTICLE 55

A neutral State may authorize the passage through its territory of the wounded or sick belonging to the belligerent armies, on condition that the trains bringing them shall carry neither personnel nor material of war.

In such a case, the neutral State is bound to take whatever measures of safety and control are necessary for the purpose.

*Article*

A neutral State may authorize the passage over its territory of the wounded or sick belonging to the belligerent armies, on condition that the trains bringing them shall carry neither personnel nor material of war. In such a case, the neutral State is bound to take whatever measures of safety and control are necessary for the purpose.

Once the sick or wounded have been admitted into the neutral territory, they cannot be returned to any other than their original country.

## ARTICLE 56

The Geneva Convention applies to sick and wounded interned in neutral territory.

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**PART IV**  
**THIRD COMMISSION**



[1]

## FIRST MEETING

MAY 23, 1899

---

Mr. **Léon Bourgeois** presiding.

Mr. **Léon Bourgeois**, who was appointed president at the first meeting of the Conference, takes the chair. His Excellency Mr. **STAAL**, President of the Conference, their Excellencies Count **NIGRA** and Sir **JULIAN PAUNCEFOTE**, honorary presidents of the Third Commission, take their places beside him.

The **President** expresses his gratitude for the honor that has been done him. It is not without emotion that he undertakes the direction of the work of this Commission on arbitration, the results of which are anxiously awaited by the civilized world.

He would have preferred to see in this place of honor some one else, who had had more experience and who bore a name of greater distinction; he alludes in particular to the eminent men seated beside him. He assures his colleagues of his whole-hearted devotion to the task in hand.

The Third Commission has this good fortune, that no division can exist among its members on the general ideas which are the bases of its work. They are assured that they will go forth together in the same direction, along the same road.

The **PRESIDENT'S** duty is to try to keep them pursuing their journey together along this road as far as possible.

The **PRESIDENT** again recalls that the Commission is bound to keep its deliberations secret. Minutes will be drawn up in manuscript and preserved by the bureau of the Conference, where they may be consulted. An analytical summary will be printed and sent to the members of the Commission, who, of course, will be communicated with, before publication, in regard to the part which concerns them. Since questions relating to arbitration present a unified character, the **PRESIDENT** thinks that there is no need of dividing the Commission into sub-commissions.

His Excellency Mr. **Eyschen**, having learned of a most interesting work on arbitrations by Chevalier **DESCAMPS**, begs its author to place it at the disposal of the Commission.

Chevalier **Descamps** will comply with this request. He will turn over to the Commission these statistical notes concerning arbitration, in which he has endeavored to collect, together with all the *compromis* clauses contained in treaties concluded between the countries represented at the Conference, all the cases of arbitration that have been tried. He will, however, require a little time in order to submit to the first delegates the proofs of these notes — at least the part regarding *compromis* clauses — that they may be able to check up the data with reference to their countries.



[2] The Commission decides to publish Chevalier DESCAMPS' work under its auspices, without, however, involving his responsibility.

His Excellency Count **Nigra** makes himself the spokesman of the members present in expressing their gratitude to the Government of Her Majesty the QUEEN OF THE NETHERLANDS for the publication of Mr. VAN DAEHNE VAN VARICK, entitled "*Actes et documents relatifs au programme de la Conférence de la Paix.*"

As the work of the Commission is of special interest to the public, Baron **Bildt** expresses the wish that the bureau will furnish the press with rather full information.

The **President** recalls that the three Commissions cannot adopt different lines of conduct in their reports to the press. It is within the province of the bureau of the Conference, acting for all the Commissions, to settle this question.

His Excellency Count **Nigra** speaks to the same effect. Messrs. **Martens**, **Descamps**, **Zenil**, and **Okolicsányi** are of the opinion that there are serious objections to communications to the press regarding the status of the Commission's work.

Jonkheer **van Karnebeek** believes that the work of the Commissions being of a preparatory nature, it would be very dangerous to make it known to the public.

His Excellency Count **Nigra**, for the same reason, moves the previous question against the motion on this subject.

Mr. **Asser** likewise is of the opinion that the motion is beyond the competence of the Commissions.

In view of these observations, Baron **Bildt** does not insist upon his proposal's being put to vote.

The **President** having recalled that the Third Commission will meet again next Friday at 2 o'clock, the meeting adjourns.

## SECOND MEETING

MAY 26, 1899

---

Mr. **Léon Bourgeois** presiding.

The minutes of the preceding meeting are read and adopted.

The **President** reads a letter from his Excellency Mr. STAAL accompanied by two documents entitled:

- (1) "Outline for the preparation of a draft convention to be concluded by the Powers participating in the Hague Conference."
- (2) "Draft arbitral code."

In turning these documents over to the Bureau, the **PRESIDENT** thanks the Imperial Russian Government for having furnished a definite basis for the deliberations of the Commission. He asks permission to indicate the questions which it seems to him should be examined by the Commission and thus to outline the plan and the order of the work to be undertaken. He does not intend, of course, to prejudice the solutions of any of the questions, nor to express in any manner his personal ideas, which his position as **PRESIDENT** does not permit him to voice at this time.

It is proper, says he, to examine first of all the general principle which brings us together.

Do we all agree, following the expression of Mr. DESCAMPS, to try to establish relations between nations preferably according to law, and to regulate them, in case of dispute, according to justice? In other words, is it more desirable to have recourse to peaceful means rather than to force in settling disputes between nations?

If we all agree upon this general principle, we shall then have to seek means of arriving at this result.

Failing the customary channels of diplomacy, which can assure friendly agreement *directly*, we shall seek means for friendly agreement *indirectly* by mediation. That might constitute the first chapter of our discussions.

Apart from mediation and by means still peaceful, but in this instance final, we shall have to examine arbitral procedure.

- [3] In the case of recourse to arbitration we must determine and enumerate the cases in which such recourse is possible.

We shall then ask ourselves whether there are cases where nations can agree in advance that this recourse shall be obligatory.

It will next be necessary to establish in advance an *arbitral procedure* accepted by all. On all these points we can take the Russian project, which has just been distributed, as our guide.

The cases where arbitration is conventionally *obligatory* or *optional* having

been established, and the procedure having been fixed, what means shall be employed to make the practice general?

Will it be preferable to proceed by extending the system of *permanent arbitration* treaties by introducing the arbitration clause in international acts?

Or, on the contrary, shall there be established a permanent *international institution* to act:

(1) As an intermediary, to remind the parties of the existence of the conventions, of the possible application of arbitration, and to offer to set the procedure in motion;

(2) As a means of conciliation previous to any judicial discussion;

(3) Finally, as a court in the form of an international tribunal.

If the Commission approves this suggestion, the order of our discussions will be expedited. (*Assent.*)

Before taking up the examination of the Russian project, the **President** inquires whether any other members of the Commission have similar proposals to make.

His Excellency Sir **Julian Pauncefote** reads the following motion:

Permit me, Mr. **PRESIDENT**, to ask you before going deeper into the matter, if it would not be useful and opportune to sound the Commission on the subject which I believe to be the most important, that is, the establishment of a permanent international court of arbitration, which you have touched upon in your remarks.

Many arbitration codes and rules of procedure have been made, but the procedure has up to the present time been regulated by the arbitrators or by general or special treaties.

Now it seems to me that new codes and rules of arbitration, whatever be their merit, do not greatly advance the great cause which brings us together.

If we want to make a step forward, I believe that it is absolutely necessary to organize a permanent international tribunal which may be able to assemble at once upon the request of the disputing nations. This principle being established, I do not believe that we shall have much difficulty in agreeing on the details. The necessity of such a tribunal and the advantages which it would offer, as well as the encouragement and even inspiration which it would give to the cause of arbitration, has been demonstrated with much eloquence and force and clearness, by our distinguished colleague, Mr. **DESCAMPS**, in his interesting essay on arbitration, an extract from which is included in the acts and documents so graciously furnished to the Conference by the Netherland Government. There is therefore nothing more for me to say upon this subject, and I shall be grateful to you, Mr. **PRESIDENT**, if before going any further, you consent to receive the ideas and sentiments of the Commission upon the proposition which I have the honor to submit concerning the establishment of a permanent international court of arbitration.

His Excellency Count **Nigra** says that he will be grateful to Sir **JULIAN PAUNCEFOTE** if he will not insist upon the place which he desires his proposal to have in the general order of the work of the Commission. He thinks it would be preferable to follow the order which has been indicated by the **PRESIDENT** and to take up the examination of the English proposal last of all, as it looks as if it would encounter certain difficulties.

His Excellency Mr. **Beernaert** supports Count **NIGRA**'s point of view. He

remarks that the proposal so happily presented by Sir JULIAN PAUNCEFOTE finds the Commission unprepared. It would certainly be of advantage to give its members time to examine the proposal and, if need be, to consult their respective Governments.

The same observation applies to his Excellency Mr. STAAL's proposals.

His Excellency Mr. BEERNAERT asks whether the English proposal is in writing.

Sir Julian Pauncefote replies that he desired merely to learn the sentiments of the Commission on the principle; he reserves the right to formulate later a definite proposal, if this principle is adopted.

He does not insist upon immediate discussion.

The **President** states that two proposals have been filed with the Bureau:

(1) the Russian project; (2) the British motion.

It would seem to be difficult for the Commission to take up at once the discussion of these texts and he proposes that they be subjected to a preliminary examination by a special committee.

[4] Chevalier **Descamps** suggests that the bureau be entrusted with the designation of the members of this committee.

The **President** asks whether the Commission does not think that it ought to make these appointments itself.

On the intervention of Count **Nigra**, it is decided that the committee of examination shall be appointed in conformity with Chevalier **Descamps**' proposal.

The **President** states that this course will be followed and that the bureau, consisting of the honorary presidents, the president, and vice-presidents, will proceed to select the special committeemen, subject, however, to confirmation by the Commission.

Before suspending the meeting, the **PRESIDENT** asks permission to state a fact which seems to him to be of the greatest significance:

The assembly, he says, has seemed to be unanimously of the opinion that it is better to have recourse to peaceful means than to force for the settlement of differences between nations. I think that the affirmation of this idea, which is common to all, defines the scope of this meeting and permits us to pass advantageously to the discussion of its application. (*General applause.*)

On the proposal of Chevalier **Descamps**, the meeting is suspended to allow the bureau to designate the members of the committee of examination.

On the resumption of the meeting, the **President** submits the following list to the Commission: **MESSRS. ASSER, DESCAMPS, D'ESTOURNELLES, HOLLS, LAM-MASCH, MARTENS, ODIER, and ZORN.**

After an exchange of views by several of the members, the Commission decides to leave it to the **PRESIDENT** to call the next meeting on one of the days set for the rotation of the work.

It is understood that Sir JULIAN PAUNCEFOTE's motion will be referred to the same committee of examination, as well as all other proposals of the same kind that may be presented.

The **President** reads a communication from his Excellency Mr. STAAL, supplementing the Russian proposal.

This document will be printed and distributed at the same time as Sir JULIAN PAUNCEFOTE's motion and referred to the committee of examination.

The meeting adjourns.

# THIRD MEETING

JUNE 5, 1899

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**Mr. Léon Bourgeois** presiding.

The **President** takes the floor and speaks as follows:

Gentlemen, you have all heard that a terrible misfortune has just befallen one of the most distinguished members of the Conference.

The daughter of Dr. ROTH, the first delegate of Switzerland, has been killed in a railroad accident, and the circumstances under which this sad event occurred makes the sorrow that has come to our colleague still more cruel.

You will feel that it is impossible to proceed with your customary work before expressing your sentiments of deep and sincere condolence. The **PRESIDENT** of the Conference has already made himself the spokesman of us all by sending the following telegram to Dr. ROTH:

Sharing most sincerely the grief that has come to you, all the members of the Conference desire to express to you their profound sympathy in this cruel bereavement.

(Signed) STAAL,  
*President of the Conference.*

You will join with me in thanking Mr. STAAL for having already expressed to our colleague the sympathetic sentiments which we all feel. (*General assent.*)

Mr. **Odier** thanks the members of the Conference in the name of Dr. ROTH for their expressions of sympathy to the first delegate of Switzerland on the occasion of his affliction.

[5] The minutes of the meeting of May 26 are read and approved.

Mr. **Beldiman** asks to be allowed to make an observation in reply to an appeal to the discretion of the members of the Conference, which was addressed to them by one of the secretaries general. A certain document marked "secret," which was recently distributed, had been published four days previously in the *Times* and reproduced the next day in the *Cologne Gazette*. It was the American project relative to the establishment of a permanent court of arbitration. He desires to remark that under these circumstances there can be no question as to the discretion of the members of the Commission.

The **President** officially acknowledges Mr. BELDIMAN's observation and states that the document was not made public by the bureau.

The **PRESIDENT** says that the committee of examination appointed at the last meeting has been organized with Chevalier DESCAMPS as its president and Baron D'ESTOURNELLES as its secretary. It has held several meetings, in the course of which it has examined the original Russian proposal and some of the other pro-

posals that have been filed with its bureau. The order of business for the meeting indicates the questions on which the Commission can begin its discussions to-day. They are the following:

Study of the first six articles of the Russian project (mediation and arbitration) and of the modifications suggested by the committee, as per the text that has been distributed.

Study of an additional article proposed by Count NIGRA, likewise distributed.

Study of a supplementary provision, suggested by Mr. HOLLS, relative to the institution of special mediation (provision also distributed).

The PRESIDENT gives Chevalier DESCAMPS the floor, in order that he may present his report in the name of the committee of examination.

Chevalier Descamps makes a report on the work of the committee of examination, in so far as good offices and mediation are concerned.

The committee has drawn its inspiration from the common desire of the Powers to exhaust all the available means of pacific settlement before consigning the adjustment of differences between nations to the clash of arms.

Along these lines the members of the committee have not failed to show a spirit of mutual good-will and cordial understanding. This spirit has assumed concrete form in a body of provisions, unanimously concurred in by the committee, which is now presented to the Commission.

The committee found the project formulated by the Russian delegation an excellent basis for its deliberations.

It has introduced a number of important improvements, which appear in Articles 3, 7, and 8 of the text now proposed.

Article 1 is the basic article of the project. It declares that the Powers have agreed to use their best efforts to settle by peaceful means differences that may arise among them. There will doubtless be occasion, when the work of the Commission has ended, to give this article a place that will better indicate its general bearing. Article 2 and those following relate to the utilization of good offices and mediation.

The utilization of good offices, justifiable in itself, is not an innovation in the law of nations. It is possible and seems to be the part of wisdom to give it greater precision and to develop it.

The Russian project rightly makes a distinction between mediation by the parties in controversy and the offer of mediation by third parties, strangers to the dispute.

Recourse to mediation has given rise to discussions in the committee, which have borne upon two points: cases in which such recourse is proper and the mitigation of the rule for such recourse.

On the first point the committee concurred in the formula presented by the Russian delegation; on the second point the committee preferred the following formula: "unless exceptional circumstances prevent."

In so far as offers of mediation are concerned, it did not seem to be possible to make them obligatory; but the committee, like the Russian delegation, considered that such offers should be recognized as being in the nature of a useful move to prevent the paralysis of good-will and to safeguard the general interests of peace.

His Excellency Count NIGRA proposed an additional provision, stipulating that "Powers, strangers to the dispute, have the right to offer good offices or mediation, even during the course of hostilities," and declaring that "the exercise

of this right can never be regarded as an unfriendly act." These provisions were accepted by the committee.

Article 4, in harmony with the Russian project, defines the rôle of the mediator and sums it up as follows: "Conciliation and appeasement."

Article 5 fixes the time when the mediator's functions cease.

That is when it is stated by one of the parties at variance or by the mediator himself that neither compromise nor the basis of a friendly agreement is acceptable.

Article 6 emphasizes the character of mediation, namely, "friendly advice," with no idea of obligation or constraint.

[6] Article 7, proposed by his Excellency Count NIGRA, determines the effects of mediation in relation to war preparations or the military operations already under way, according as the mediation takes place before or after the beginning of hostilities. The purpose of this provision is to make mediation more readily acceptable by not requiring the suspension of war preparations or war operations, and by leaving to the States at variance the option of stipulating such suspension.

Finally, Article 8, proposed by Mr. HOLLS, recommends the application of special mediation when circumstances permit.

This form of mediation is based upon the practical observation that in many cases it is preferable to leave the discussion of the points at issue to "seconds" selected by the respective interested parties.

It has the merit of introducing in a way a new jurisdiction into the procedure for disputes between States.

It admits of a period during which the contending States discontinue all direct communication on the matter in dispute.

Mr. HOLLS proposes, moreover, that in case of an actual rupture of peaceful relations, the States which are carrying on the special mediation still have the mission of taking advantage of every opportunity to restore peace.

These proposals were most favorably received in the committee.

All the provisions constituting the eight articles now submitted to the Commission are presented with the unanimous approval of the members of the committee.

Before opening the discussion on the text of the articles proposed, the **President** recalls that this is the first reading; that is to say, it is merely preparatory in character, but it permits the Commission to enter at once into collaboration with the committee.

It is understood that each delegate may reserve the right to make, on the second reading, any observations which he may have to present.

Mr. **Delyanni** says that the Hellenic Government, which he has informed of the various proposals submitted to the Commission concerning recourse to good offices, mediation, and arbitration, has not yet had time to receive his communication, study the questions, and send him instructions.

Mr. **DELYANNI** asks permission to make known the opinion of his Government at a subsequent meeting.

His Excellency **Turkhan Pasha** makes a similar observation as follows:

It is of course understood that the adoption on first reading of the project on mediation does not bind the Ottoman delegation, which is waiting for instructions from its Government before declaring itself with regard to each of the articles forming the project.

The **President** informs Messrs. DELYANNI and TURKHAN PASHA that their declarations will be placed on record.

He says that the Commission can pass forthwith to the examination of the texts and he reads Article 1:

With purpose to prevent, as far as possible, recourse to force in international relations, the signatory Powers have agreed to use their best efforts to bring about by pacific means the settlement of differences which may arise between them.

Count **de Macedo**, referring to the expression "the nations" used by Chevalier DESCAMPS in his exposition, asks whether that expression should not be substituted for the word "them," with which the article ends and which would seem to limit the exercise of mediation to the signatory Powers alone.

Chevalier **Descamps** remarks that this point was not the subject of special study on the part of the committee, but the latter is perfectly willing to consider it. Count **DE MACEDO**'s observation will be particularly timely when the question whether the first article should be detached and placed at the head of the whole convention comes up for decision.

The **President** says that Count **DE MACEDO**'s observation has been carefully noted; it may, moreover, apply to other articles, particularly to accession clauses, which appear in all the conventions of this character.

Mr. **Martens** remarks that a distinction must be made between legal obligation among nations, which alone is of a contractual character, and a simple academic *væu*, to which Article 1 would be reduced, if the words "the nations," were substituted for "them." What Mr. **MARTENS** wants is a conventional bond among the signatory Powers.

Mr. **Beldiman** asks why the committee has substituted the word "differences" for the word "disputes," which appeared in the Russian text. Since Article 1 mentions the case of war, the word "disputes" (*conflicts*) would be the more proper term.

[7] Chevalier **Descamps** points out that the committee endeavored to find the generic term which would cover most comprehensively all the controversies which it is a question of settling by peaceful means.

His Excellency Mr. **Beernaert** concurs in the committee's wording.

Mr. **Asser** remarks that, since Article 1, as Mr. **DESCAMPS** has said, is of a general character, the word "differences," adopted by the committee of examination, should be retained.

The **President** sums up these divers observations, stating that Article 1 is to be considered as a general preamble and that obligations, properly so called, begin with the following article. He declares Article 1 adopted, subject to these observations.

Article 2 is adopted with the modification made by the committee of examination. It reads as follows:

Consequently the signatory Powers decide that, in case of serious disagreement or dispute, before an appeal to arms they will have recourse, unless exceptional circumstances prevent, to the good offices or mediation of one or more friendly Powers.

The **President** reads Article 3 with the additional paragraph proposed by Count **NIGRA**:

#### ARTICLE 3

Independently of this recourse, the signatory States recommend that one or more Pow-



ers, strangers to the dispute, should, on their own initiative, and as far as circumstances may allow, offer their good offices or mediation to the States at variance.

Powers, strangers to the dispute, have the right to offer good offices or mediation, even during the course of hostilities.

The exercise of this right can never be regarded by one or the other of the parties in conflict as an unfriendly act.

His Excellency Count **Nigra** asks to be permitted to add a remark to the reporter's very accurate exposition.

When we speak of mediation, the question arises first of all whether Powers not concerned in the dispute should have the obligation or merely the right of offering their services as mediators.

If there were a chance of this principle's being admitted by the Conference, the Italian Government, for its part, would have no objection to accepting it.

But inasmuch as this chance is remote, it is necessary for the Conference to declare clearly, in order to encourage third Powers to offer their mediation, that the exercise of this right has nothing about it that can be construed as an unfriendly act. Such is the aim of the amendment, whose political bearing cannot be disputed.

Mr. d'Ornellas **Vasconcellos** asks whether this amendment does not duplicate Article 6.

The **President** explains that the word "friendly" (*amical*) has a different meaning in the two articles.

In Article 3 it is a question of protecting the mediating Power from any false interpretation of its intervention by defining its friendly character.

Article 6, on the contrary, refers to the character of the act of mediation itself, which, unlike arbitration — which latter determines the rights of the parties — is only friendly advice given in a kindly spirit.

Article 3 is adopted.

Articles 4, 5, and 6 are also adopted in the following form:

#### ARTICLE 4

The part of the mediator consists in the reconciliation of the opposing claims and in appeasing the feelings of resentment which may have arisen between the States in dispute.

#### ARTICLE 5

The functions of the mediator are at an end when once it is declared, either by one of the parties to the dispute, or by the mediator himself, that the settlement or the bases of a friendly settlement proposed by him are not accepted.

#### ARTICLE 6

Good offices and mediation, undertaken either at the recourse of the litigant parties, or on the initiative of Powers strangers to the dispute have exclusively the character of friendly advice.

Article 7 is read:

#### ARTICLE 7

The acceptance of mediation cannot, unless there be an agreement to the contrary, have the effect of interrupting, delaying, or hindering mobilization or other measures of preparation for war.

[8] If it takes place after the commencement of hostilities, the military operations in progress are not interrupted unless there be an agreement to the contrary.

His Excellency Count **Nigra** states that it is important that the purpose of this article be thoroughly understood.

When mediation takes place, the conditions are generally regulated by special stipulations either by means of an actual convention or by means of an exchange of notes, or in some other form.

Consequently there will seldom be occasion to apply this article. It might even have been omitted without disadvantage.

Nevertheless, as there is no doubt that several of the great Powers would not have consented to adopt the principle without this reservation, Count **NIGRA** deemed it advisable to formulate it as it is submitted to the Commission, in order to make the acceptance of mediation possible and easier.

Perhaps there might have been some thought of inverting the terms and declaring that interruption of mobilization and other preparatory measures would have been the normal and immediate consequence of the acceptance of mediation, unless there were a convention to the contrary. He does not, however, believe that the principal Powers would accept this formula, which Italy, in so far as she is concerned, would be disposed to support.

The article as proposed to the Commission, far from having a restrictive character, tends, as has been said, to facilitate recourse to mediation.

Mr. **Beldiman** asks why the committee of examination has deleted the words "in progress" (*en cours*), which appear in Article 7 after "military operations."

Chevalier **Descamps** explains that it has been necessary to consider two distinct hypotheses:

(1) Where mediation takes place *before* the declaration of war, in which case it will not prevent preparatory measures;

(2) Where mediation takes place *after* the outbreak of hostilities, in which case military operations in progress will not be suspended.

Article 7 is adopted.

Article 8 (Mr. **HOLLS'** proposal) is read:

#### ARTICLE 8

The signatory Powers are agreed in recommending the application, when circumstances allow, of special mediation in the following form:

In case of a serious difference threatening the peace, the States in dispute choose respectively a Power to which they entrust the mission of entering into direct communication with the Power chosen on the other side, with the object of preventing the rupture of pacific relations.

For the period of their mandate which, unless there is a contrary provision, cannot exceed thirty days, the question in dispute is regarded as referred exclusively to these Powers. They must use their best efforts to settle the difficulty.

In case of a definite rupture of pacific relations, these Powers are charged with the joint task of taking advantage of any opportunity to restore peace.

On the proposal of his Excellency Mr. **Beernaert**, it is decided to omit the word "*tombées*" in the first paragraph and to substitute "*qui le permettent*" for "*qui peuvent le permettre*" in the same paragraph.

In reply to an observation by Mr. **D'ORNELLAS VASCONCELLOS** relative to the last paragraph of Article 8, Chevalier **Descamps** says that it would perhaps have been better to word it differently, for instance, that "the two Powers shall cease to communicate directly with each other with regard to the matter in dispute."

The committee of examination reserves the right to propose a new wording on this point.

Mr. **Martens** draws attention to the important distinction that must be made between Article 8 and the seven remaining articles.

In the first seven articles the Powers *agree* to accept a certain procedure; in the eighth they agree to *recommend* a method of procedure. He thinks that this distinction detracts from the importance of the questions regarding the wording of Article 8.

Article 8 is adopted.

The **President** thanks Chevalier DESCAMPS, on behalf of the Commission, for the useful and interesting way in which he has set forth the *general statement of mediation and arbitration clauses concerning the Powers represented at the Conference* in the work which has been distributed in proof.

His Excellency Count **Nigra** makes a special point of joining in these thanks.

The **President** adjourns the meeting, stating that the Commission will be convoked at a later date through the bureau.

## FOURTH MEETING

JULY 7, 1899

Mr. **Léon Bourgeois** presiding.

The minutes of the meeting of June 5 are adopted, subject to a correction requested by Mr. **Beldiman**, which will be taken into account.

Mr. **Delyanni**, delegate of Greece, says that he has received from his Government instructions which will permit him to withdraw the reservation that he had made at the preceding meeting, at the time of the vote on the proposals relative to good offices and mediation, and he states that he is authorized to adhere to these proposals.

Mr. **Delyanni** is informed that his declaration will be put on record.

The **President** says that the late date at which the Commission has been convoked is to be explained by the amount of work which the committee of examination had to accomplish. The Commission can judge how considerable that work was by examining the 56 articles relating to good offices and mediation, international commissions of inquiry, and arbitration, the text of which has been unanimously adopted by the committee.

He adds that the present meeting will therefore be devoted solely to hearing the explanatory statement which Chevalier **Descamps**, reporter of the committee, has been good enough to draw up with regard to the proposed provisions. No discussion will be opened and no action taken. It will be nothing more than a first preparatory reading, which in no way prejudices the resolutions of the delegates.

The **PRESIDENT** remarks further that in the draft Convention that has been distributed three articles have been omitted by mistake. New copies of the completed draft will be printed and distributed among the members of the Commission.

Chevalier **Descamps** makes the following report on the work of the committee of examination:

The committee of examination on questions relating to mediation and arbitration has entrusted me with the duty of laying before this preliminary meeting of the Commission a general exposition of the provisions contained in the second part of the draft Convention for the peaceful settlement of international disputes.

Before I take up this task, allow me to revert for a moment to the first part of this draft, to point out certain modifications adopted by the committee as a result of the exchange of views which took place at the last meeting of the Commission.

With regard to Article 1, the committee, concurring in the observation of Count **de Macedo**, considered that it would be of great advantage to give the widest scope to the provision by which the Powers agree to use their best efforts

to insure the maintenance of the general peace. The new reading is based upon this idea.

In Article 2 the engagement to have recourse to mediation had been tempered by the following reservation: "unless exceptional circumstances prevent." On the proposal of his Excellency Sir JULIAN PAUNCEFOTE and in order to avoid certain practical difficulties in the application of a new rule, the committee agreed to the following formula: "as far as circumstances allow." This formula is close to that of the original text proposed by the Russian delegation.

The conclusion of Article 6 reads as follows: "Good offices and mediation . . . have exclusively the character of advice, and never have binding force." This formula is still imperfect, it is true. It is not different in meaning from the formula previously accepted. The committee has stricken out the word "friendly" before the word "advice," in order to avoid the confusion that there seemed to be between the terms of Article 6 and those of the final paragraph of Article 3, where it is stated that "the exercise of the right to offer good offices and mediation can never be regarded by either of the parties in dispute as an unfriendly act."

Finally, in Article 8, the committee considered that it was necessary to take into account the observation made by Mr. d'ORNELLAS and to adopt the following reading for paragraph 3: "The States in dispute cease from all direct communication on the subject of the dispute, which is regarded as referred exclusively to the mediating Powers, who must use their best efforts to settle it."

Before hearing the general exposition which the committee of examination has charged me to make, it may be agreeable to the Commission to learn whether the explanations which have just been presented answer the observations made at our last meeting.

[10] Mr. d'Ornellas Vasconcellos, having no knowledge of the modification introduced in Article 8, to take into account his observation on the scope of the word "exclusively," hopes that this article will be worded in conformity with the declaration just made by the distinguished reporter.

The **President** states that there can be no doubt as to the interpretation of the text, and on the second reading this interpretation will be still further confirmed, if it is deemed necessary.

Chevalier **Descamps** confirms the **PRESIDENT's** statement and then begins the general exposition of the provisions contained in the second part of the draft Convention submitted to the Commission.

The first question which calls for the attention of the Commission, after that of mediation, is the question of international commissions of inquiry.

The institution of international commissions of inquiry is not an innovation in the law of nations. It has rendered important services in the past; it may render still greater services in the future.

Disputes sometimes arise between States with regard to facts that may at a given moment over-excite public opinion and even lead it completely astray. Two things would then seem to be necessary. The true facts must be ascertained in good faith, so as to prevent this misleading of public opinion. We must also gain time with a view to calming the popular mind. International commissions of inquiry exactly answer this twofold requirement.

As their name implies, it is not the duty of these commissions to make decisions. Their only mission is to make a report stating the facts accurately and completely.

The Russian project proposed that the institution of international commissions of inquiry be made obligatory, provided that neither the honor nor vital interests of the interested Powers were involved in the controversy. Even with this limitation, the principle of obligatory recourse seemed to be too absolute in character. On the other hand, it did not appear to be possible to confine ourselves to a simple recommendation of the institution of commissions of inquiry, as was proposed by Mr. LAMMASCH, delegate of Austria-Hungary. Finally, the committee concurred in a compromise proposal containing the agreement to have recourse to these commissions, "as far as circumstances allow."

This reservation was not accepted without some feeling of regret on the part of several of the members, who pointed out that, since a restriction regarding vital interests and national honor already figured in the proposed provision, the grafting of a second reservation upon the first would appear to be unnecessary and difficult to explain.

However that may be, the institution of international commissions of inquiry, accepted to this extent, was unanimously regarded by the committee as an important pledge of pacification and as a valuable aid to States that wish in good faith to throw light upon facts, the knowledge of which may contribute to the maintenance of friendly relations.

In order that the institution may produce such results, it is important that the appointment of the members of the international commissions of inquiry be made at once, in accordance with rules facilitating their constitution. A special article stipulates that the members shall be appointed, unless there be a convention to the contrary, in conformity with the general rule wisely established in Article 31 of the present act for the formation of arbitration tribunals.

After the filing of the report of the international commission of inquiry, the interested States remain free either to conclude a friendly arrangement on the basis of the report on file, or to have recourse to some form of mediation, or to submit their dispute to arbitration.

We are now coming to the important chapter of the committee's deliberations, that on international arbitration.

Arbitration belongs above all else to the organic institutions of legal peace among the States.

International arbitration has been tested; it has penetrated further and further into international practice. It has won favor with all at the present time. The most promising future lies before it. The time seems to have come to give it, with broadened scope and a stronger organization, the place assigned to it in the law of nations by the progress in international relations and the juridical conscience of civilized peoples.

The questions included in the general problem of arbitration are many. The order to be followed in examining these questions had been pointed out to us by our PRESIDENT at the very beginning of our meetings. We have followed that order.

We have examined in turn all the questions connected with arbitral justice and the differences which fall within its jurisdiction, the organization of arbitral jurisdictions, and the institution of a permanent court of arbitration, and, finally, arbitral procedure.

[11] The sanction of the principle of arbitral justice was received with marked favor by all the members of the committee.

Arbitral justice does not present the same characteristics in international law

as it does in municipal law. In the latter branch of the law it appears as a sort of derogation from the public organization of jurisdictions. In international law it provides for the absence of all jurisdiction and tends directly to prevent recourse to force.

Arbitral justice is not an unconsidered abdication; it is, on the contrary, an enlightened utilization of the sovereignty of States. It offers itself to us as the procedure that is most in conformity with reason, humanity, and the true interests of the parties, in so far as these last seek only a legal determination, by the least hazardous means, of what is their right according to law.

The Russian project proposed that it be declared that arbitration is indeed the most efficacious and equitable means of settling disputes of a legal nature between States. The committee was unanimous in maintaining this fundamental provision, to be applied to cases in which ordinary diplomatic relations have not settled the difference.

It is important to define the scope of this point.

States have never considered that arbitration is applicable indiscriminately to all the differences that may arise among them. There are controversies which seem to be exempt from arbitral justice, because the contentions of the parties cannot be formulated in a legal manner. Many political differences are of this character.

Even in the province of law, States — the majority of them at any rate — do not consider that arbitration is applicable forthwith to every dispute of a legal nature. There are disputes affecting rights of so superior an order that the Powers do not consider themselves authorized to submit them to arbitral justice.

The formula covering these excepted cases may vary. "Independence and autonomy," says the Hollando-Portuguese declaration of July 5, 1894; "Vital interests and national honor," says the Russian project which was submitted to us.

Whatever criticisms may be made of the latter formula, the favor which it seems to have met with on the part of several of the States, whose cooperation in this direction appeared to be particularly desirable, determined the committee to support it.

Differences of a non-legal nature and differences of a legal nature affecting vital interests or national honor being reserved, an important question presented itself: Is it possible to sanction the rule of obligatory arbitration for all other disputes?

There exist general arbitration treaties recently concluded by various States, which contain the single reservation we have indicated, or which contain no reservation whatever. The Italo-Argentine treaty of July 23, 1898, is a treaty of this character. Several other international instruments of like nature have been negotiated within recent years.

The Russian project did not go as far as that. It confined itself to recognizing obligatory arbitration for a certain series of disputes specifically determined, recommending arbitration for all other controversies, but leaving recourse thereto optional.

This system necessarily involved the enumeration of the cases subject to obligatory arbitration. The Russian project grouped them in two extensive categories: controversies relating to pecuniary claims for unlawful injuries and controversies relating to the interpretation or application of certain conventions, mainly conventions known as universal unions.

The committee was at first in favor of this system and studied in detail the

cases for obligatory arbitration enumerated in the Russian project, withdrawing some, restricting the scope of others, making a very few additions, and remaining, on the whole, within the broad lines laid down in the original text.

As the discussion proceeded, it became apparent to the committee that it was impossible to reach a unanimous agreement on this subject. Germany did not feel that she could consent to agree in advance by a general treaty to new cases that should be subject to obligatory arbitration.

Under these conditions and with the reservation of all opinions, the committee finally decided upon a provision bearing upon two points:

On the one hand, calling attention to all general and special arbitration treaties, which already contain the obligation for the signatory States to have recourse to arbitration. This obligation is in a measure imposed upon all States, particularly in so far as a number of treaties of a general character, such as the Universal Postal Union, are concerned.

On the other hand, a declaration by which the signatory States expressly reserve the right to conclude, either before the ratification of the present act or later on, new agreements, either general or special, with a view to developing obligatory arbitration to the greatest extent that they judge possible.

The adoption of this provision, which circumstances have rendered necessary, imposes sacrifices upon States that are disposed to take an important, though prudent, step along the road proposed by the Russian delegation. It is proper to remark, however, that it leaves the way open for good-will.

On another point of important bearing the committee's efforts brought about a happier result. It succeeded in obtaining unanimous cooperation, in so far as the sanction and development of a permanent court of arbitration are concerned, whose character we are now about to determine and whose fundamental structure we shall endeavor to elucidate.

The presentation by three of the largest States in the world of three projects concerning the institution of a permanent court of arbitration is undoubtedly one of the most important facts that have characterized the meeting of this Conference.

With these three proposals before it the committee took up the examination of them on the basis of the project presented by Sir JULIAN PAUNCEFOTE, whose memorable initiative at the very outset of our labors has not been forgotten by the Commission. The very kindly manner in which the first delegate of Great Britain was good enough to refer to the "Memorandum to the Powers on the organization of international arbitration" stirred in the heart of the author of this Memorandum a feeling of gratitude which he cannot refrain from expressing here.

The graciousness of our colleagues from Russia and from the United States, who were so obliging as to present in the form of amendments the provisions of their respective projects, which they were disposed to maintain in the face of the English project, greatly contributed to facilitate the committee's task.

Under these conditions, our general exposition may be confined to pointing out the main differences between the original project of Sir JULIAN PAUNCEFOTE and the provisions decided upon by common agreement in the committee. Here are the points which should be brought out:

The first is the name of the new institution. The committee concurred in the designation "Permanent Court of Arbitration." The expression "Per-



manent Court of Arbitrators" was proposed by Dr. ZORN, delegate of Germany. He was finally willing, in agreement with all his colleagues, to adopt the definitive appellation "Permanent Court of Arbitration." This title cannot but raise the character of the institution which we are endeavoring to found.

The second point that it is important to note is the general competence of the Court to try all cases of arbitration without prejudice to the freedom of the States to constitute, if they so desire, other special courts. We understand that we are creating "a free tribunal amidst independent States." This point of view was not foreign to the English project, but it was accentuated in an additional article presented by the Russian delegation.

Another point to which it is important to call attention concerns the number of arbitrators to be designated by the States. Sir JULIAN PAUNCEFOTE's project fixed this number at two. There was no question of establishing inequalities among the States from this point of view, but the delegate of Germany proposed that the number of arbitrators be raised to four, in order to give greater latitude to the States that might wish to have various kinds of ability represented by the arbitrators selected by them. It is, moreover, understood that several of the States may, if they so desire, agree upon a common choice and that the same persons may be chosen as arbitrator by different States.

The term of office of a member of the Court has been fixed at six years, but the terms of arbitrators previously designated may be renewed. These provisions have been borrowed to a great extent from the project formulated by the Interparliamentary Conference at Brussels.

The American delegation would have preferred to have the arbitrators selected by the highest court of justice in each State. In support of this suggestion, it argued the necessity of keeping the members of the Court free from the vicissitudes of political influence. The committee did not consider it possible to comply entirely with this motion. It was observed that the States were organized in somewhat different ways from a judicial point of view. Besides, it was thought that the Governments would not be willing to renounce in a general way the right of designating the arbitrators themselves. The committee recognizes that it is necessary for the States to base the selections which they will have to make upon principles of the utmost impartiality.

The seat of the International Bureau, the institution of which was proposed by Sir JULIAN PAUNCEFOTE, has been fixed at The Hague by common agreement, and various measures have been adopted with a view to making this city the headquarters of all arbitral courts. A just tribute to the Government of the Netherlands and the Netherland people.

For the administrative council originally provided for, there has been substituted a Permanent Council composed of the diplomatic representatives of the signatory States residing at The Hague, with the Minister of Foreign Affairs of the Netherlands as its President. This modification was made in the original project on the initiative of the author of the project himself, Sir JULIAN PAUNCEFOTE. The innovation seems to be as happy as it is important. It is calculated to give still greater stability to the structure that we desire to erect and to increase its prestige.

Let us call attention, in this connection, to the provision granting the members of the Court diplomatic privileges and immunities during the performance of their duties.

[13] Certain measures to be taken in the matter of the communication of the

documents of which the registry is to be custodian have been extolled by the delegates of the United States of America. The committee considered that it was possible to satisfy this desideratum, without inserting a special text in the act, by a reference to the general powers of the International Bureau. It is, however, important to take into account the right of the States with regard to the communication of documents relative to the cases in which they have intervened.

In so far as the Permanent Court is concerned, it remains for me to call the Commission's attention to a remarkable provision, due to the initiative of the French delegation. It is of great importance in the work of pacification in which we are engaged. It tends to connect the Permanent Court of Arbitration to a still greater extent with this work.

Considerations that are legitimate in many respects and that it is, in any event, difficult to avoid often keep States from having recourse to arbitration. Public opinion is easily led to regard a step in this direction as an act of weakness rather than an act of confidence in the domain of law and of moderation based upon a spirit of justice.

In this situation and with an eye to the cases of acrimonious disputes that may arise, we may ask ourselves whether it is not possible and whether it would not be wise to provide for calling the attention of the parties at variance to the provisions of the present Convention, especially as regards access to the Permanent Court of Arbitration, which is open to all.

The means of attaining this result is sought in the International Bureau. This measure had the advantage of enabling the chosen organ to operate in a way as of its own accord, without wounding susceptibilities in any manner whatever.

Another means of reaching the same result, less surely it is true, but perhaps with more authority, is by the exercise of mediation applied to the particular end of which we have already spoken. The committee has definitively decided upon this means by adopting a new provision, by virtue of which the signatory Powers consider it their duty, in case a serious dispute should threaten to break out between two or more among them, to remind them that the Permanent Court of Arbitration is open to them. It would therefore be expressly stipulated that the fact of one or more Powers reminding the parties in dispute of the provisions of the present Convention and the advice given in the higher interests of peace to appeal to the Permanent Court may only be regarded as acts of good offices.

The principle of this proposal, set forth successfully by the PRESIDENT and Baron d'ESTOURNELLES DE CONSTANT, was received most favorably in the committee. The PRESIDENT will, I hope, be good enough to point out to the Commission the importance that we all attach to it.

The last question which I have to take up in this general exposition is that of arbitral procedure. I should like to show briefly the arrangement of the provisions adopted by the committee along these lines.

It is very desirable, when the parties have recourse to arbitration, that the court chosen by them should operate according to rules of such a character as to obviate every difficulty. Such rules do not exist at the present time, at least in the form of provisions that are uniformly and generally accepted. The more arbitrations increase in number, the more manifest becomes the need of such provisions. The Institute of International Law long ago understood the inconveniences resulting from the present state of affairs and formulated regulations con-

cerning arbitral procedure which are of the greatest interest. Other efforts have been made in the same direction. The practice of international arbitration has developed. In a number of important arbitrations rules have been established which give evidence of wise foresight and reveal the fruit of numerous experiments. It is now possible to gather from the labors of science and the results of experience a body of prescriptions of a kind that will be adopted by the States at large.

The Russian delegation seemed to be particularly fitted to take the initiative in this advance, as it has in its midst the illustrious jurisconsult who has so often been called upon to perform the duties of an international arbitrator. Our colleagues from Russia have indeed presented us with a remarkable arbitration code, which has constantly served us as a guide in the work we have undertaken. Here are the main points upon which we have concentrated our attention.

In the first place, we undertook to determine as clearly as possible the points which the *compromis* must in every case determine as clearly as possible, namely, the matter in dispute and the extent of the arbitrators' powers.

We have sought the best method of forming the arbitral tribunal and of appointing the umpire, if occasion demands. It sometimes happens that the arbitrators directly appointed by the States cannot agree upon the choice of an umpire. With a view to this contingency, treaties generally stipulate recourse to a third Power, who is vested with the mission of this supplementary election.

Many treaties do not go beyond this general provision. Some, however, provide for cases in which it is found impossible to reach an agreement as to the designation of the third Power, stipulating for such cases the intervention of a neutral Power or of the head of a specific State, or even the drawing of lots as a last resort.

The committee, in concert with the Russian delegation, felt that it could with advantage adopt a system similar to that accepted for the operation of the special mediation proposed by Mr. HOLLS. Therefore, if an agreement is not reached as to the selection of a single Power, each party designates a different Power, and the selection of the umpire is made by the Powers thus designated. The specific duty of these Powers being to choose conjointly an umpire, it is hardly necessary to anticipate, it would seem, the eventuality of their not succeeding in so doing.

On another important point the committee considered it necessary to modify the provisions adopted by the Russian project, namely, in the event of the death of an arbitrator or his inability to serve for any reason whatever. The Russian project proposed that in such a case the *compromis* should be declared wholly annulled. After a long discussion, the very opposite rule prevailed, and it was agreed that, unless it be stipulated to the contrary, the place of the deceased or absent arbitrator shall be filled in the same manner as that fixed for his appointment.

The question of the seat of the arbitral tribunal and the language to be used before the arbitrators did not give rise to any serious difficulties. It was decided along the lines of the proposals submitted by the Russian delegation.

The same is true as regards the question of the appointment of special agents — those necessary intermediaries in international arbitration procedure between the tribunal and the Powers at variance.

The two successive phases which generally occur in arbitral procedure — the phase of the communications properly so called and the phase of the

arguments — have been preserved and more clearly defined in certain respects.

The committee has recognized that the tribunal has the power to pass upon its own competence by interpreting the *compromis*, as well as the other treaties that may be invoked in the matter and by applying the principles of international law.

As regards the deliberations, the Russian proposal adopted the rule that the decisions shall be rendered by a majority of the members present. The committee has thought that, in order to insure more complete guaranties, it is wise to require a majority of the members composing the tribunal.

The Russian project, for practical considerations, refrained from stipulating the necessity of giving the reasons on which the award is based. While recognizing to a certain extent the importance of the considerations put forward by the authors of the project, the committee did not feel that it could remain silent with regard to so fundamental a guaranty.

Revision of the arbitral award was not provided for in the Russian project. The American delegation, on the other hand, provided in its plan for the constitution of an arbitral court expressly for the "rehearing" of the cause. The principle of appeal in the matter of arbitral awards has been rejected, but the principle of an extremely limited revision has carried the day. An additional article sanctions this. The application for revision must be made to the tribunal that has passed upon the case. Such application may be made within the three months following notification of the judgment and only in case of the discovery of a new fact which would have materially affected the award and which at the time of the award was unknown to the tribunal itself and to the parties. This is an important guaranty against abuse of requests for revision.

It may happen that a convention has been concluded by a number of Powers and that there arises between two of these States a question of interpretation. Mr. ASSER considered that in such an event the other States would be called upon to intervene in the case, so that the interpretation contained in the award might become binding upon all these States. This proposal has been accepted by the committee; it has been made the subject of a special provision, inserted at the end of the chapter on arbitration procedure.

Such are the principal provisions grouped by the committee under the following title: International arbitration. Considered in themselves and in their relation to the law of nations as it now stands, these provisions constitute a remarkable step forward. Considered from the point of view of their influence upon the future, they stand out as a valuable pledge toward the realization of the purpose pursued by the Conference.

This is not a perfect piece of work. The members of the committee would be the first to admit its imperfections. They believe nevertheless that it deserves to be generally accepted. If the Conference approves it, it will be for the Governments to make it bring forth the results that may legitimately be expected from it for the good of mankind, the fraternal rapprochement of peoples, the stability of peace, the honor and development of modern civilization. (*Applause*)

The **President** says that the applause which has greeted Chevalier DESCAMPS' words shows the sentiments of the assembly on hearing the exposition, [15] so clearly put and of such lofty inspiration, which he has just presented.

This exposition will remain the most lucid and useful commentary on the provisions that are to govern the question of arbitration, and it will be the surest

guide not only for the members of the Conference during their discussions, but also for the Governments themselves hereafter, when it is a question of interpreting the text of the Convention.

For these reasons Chevalier DESCAMPS is entitled to the gratitude of all, and the PRESIDENT makes himself the interpreter of the Commission's sentiments with an ardent and sincere emotion. (*Unanimous applause.*)

In order to enable the delegates to study the draft Convention and to communicate its text to their respective Governments, the PRESIDENT proposes that the next meeting of the Commission be postponed for a week.

Mr. Delyanni requests that the meeting be called for Monday, the 17th, because of the difficulties of communicating by mail with his country.

Mr. Beldiman remarks that there is still another reason which leads him to second Mr. DELYANNI's proposal. As a matter of fact, July 14 is the date of the French national holiday, and the Commission would no doubt want to relieve Mr. BOURGEOIS of the necessity of presiding on that day.

The President thanks Mr. BELDIMAN for his delicate thoughtfulness. He considers that there would be all the more advantage in fixing July 17 as the date of the next meeting, since it is to be hoped that all will then be in a position to take up the work of examining the postponed project without interruption.

The Commission therefore decides that its next meeting will take place on Monday, July 17, at 2 o'clock.

The meeting adjourns.

## FIFTH MEETING

JULY 17, 1899

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**Mr. Léon Bourgeois** presiding.

The minutes of the fourth meeting are adopted.

**Mr. Beldiman** says that he joins whole-heartedly in the words addressed by the **PRESIDENT** to **Chevalier Descamps** in praise of the very lucid exposition that he made at the preceding meeting.

Nevertheless, in so far as the official interpretative character of this exposition is concerned, **Mr. Beldiman**, without contesting its absolute faithfulness, says that he must leave his Government entirely free to pass upon this point.

The **President** replies that there can be no doubt as to the character of **Mr. Descamps'** exposition.

In future when any one desires to refer to the preparatory work of the Commission, nothing will be more useful than the reporter's commentary.

Before passing to an examination of the articles relative to international commissions of inquiry and arbitration, the text of which has been corrected and distributed, **Chevalier Descamps** explains the reasons why Article 19 has been transferred to No. 29 *bis* (Section 3, Arbitration procedure), where it seemed to belong.

He adds that the corrected copy is the result of further consideration by the committee of examination, to which various amendments have been submitted and which has led the committee to make certain changes in the original reading.

The **President** recalls that the Commission adopted, on the first reading, Articles 1-8 relative to the maintenance of general peace and good offices and mediation. He opens the discussion on Article 9.

**Mr. Beldiman** states that he is in the midst of an exchange of views with his Government and therefore is unable to take part in the discussion, on the first reading; but he reserves the right to express his opinions on the second reading.

[16] **Mr. Miyatovitch** makes a similar declaration.

In order to enable the delegates of Roumania and Serbia to receive their instructions and to take part to advantage in the discussion of Articles 9-13, the **President** proposes that this discussion be postponed until the next meeting and that the Commission pass immediately to Section 4 on international arbitration.

His Excellency **Turkhan Pasha** speaks as follows:

The Ottoman delegation, not having as yet instructions from its Government on the subject presented to the Third Commission by the committee of examination, will abstain from taking part in the discussion thereof.

The **President** informs his Excellency **TURKHAN PASHA** that his declaration will be put on record.

Article 14 is read:

International arbitration has for its object the settlement of disputes between States by judges of their own choice, and on the basis of respect for law.

This article is adopted.

Article 15 is read:

In questions of law, and especially in the interpretation or application of international conventions, arbitration is recognized by the signatory Powers as the most effective, and at the same time the most equitable, means of settling disputes which diplomacy has failed to settle.

Mr. **Beldiman** states that he reserves the right to present an amendment to this article on the second reading.

Article 15 is adopted, subject to this declaration.

Article 16 is read:

The arbitration convention is concluded for questions already existing or for questions which may arise eventually.

It may embrace any dispute or only disputes of a certain category.

Mr. **Beldiman** makes the same declaration with regard to this article.

Article 16 is adopted, subject to this declaration.

Article 17 is read:

The arbitration convention implies an engagement to submit in good faith to the arbitral award.

This article is adopted.

Article 18 is read:

Independently of general or private treaties expressly stipulating recourse to arbitration as obligatory on the signatory Powers, these Powers reserve to themselves the right of concluding, either before the ratification of the present act or later, new agreements, general or private, with a view to extending obligatory arbitration to all cases which they may consider it possible to submit to it.

Mr. **Beldiman** makes the same declaration with regard to this article.

Mr. **Veljkovitch** desires to make it clear that Article 18 leaves to the Governments the option of concluding, either before ratification or afterwards, new agreements, but that this provision does not imply an *engagement* on the part of these Governments to do so.

The **President** replies that there can be no doubt as to this interpretation.

Article 18 is adopted, subject to the above-mentioned declarations.

Article 19 being provisionally transferred to Section 3, the Commission passes to Section 2: The Permanent Court of Arbitration.

Article 20 is read:

With the object of facilitating an immediate recourse to arbitration for international differences which it has not been possible to settle by diplomacy, the signatory Powers undertake to organize a Permanent Court of Arbitration, accessible at all times and operating,

unless otherwise stipulated by the parties, in accordance with the rules of procedure inserted in the present Convention.

Article 20 is adopted.

Article 21 is read:

The Permanent Court shall be competent for all arbitration cases, unless the parties agree to institute a special tribunal.

[17] Count de Macedo says that his instructions enable him to accept the entire project *ad referendum* but that he desires to submit an amendment to Article 21, which seems to him calculated to give greater force and vitality to the institution of the Permanent Court of Arbitration.

This amendment reads as follows:

Nevertheless, in the event of an understanding simply to have recourse to arbitration, the signatory Powers agree to give the preference to the Permanent Court of Arbitration rather than to a special tribunal, whenever circumstances permit.

COUNT DE MACEDO does not ask the Commission to pass upon this amendment immediately, but to refer it to the next meeting of the committee of examination.

The **President** says that this will be done, and Article 21 is adopted, subject to this reservation.

Article 22 is read:

An International Bureau, established at The Hague, and under the direction of a permanent secretary general, serves as registry for the Court.

This Bureau is the channel for communications relative to the meetings of the Court. It has the custody of the archives and conducts all the administrative business.

The signatory Powers undertake to communicate to the International Bureau at The Hague a duly certified copy of any conditions of arbitration arrived at between them and of any award concerning them delivered by a special tribunal.

They undertake likewise to communicate to the Bureau the laws, regulations, and documents eventually showing the execution of the awards given by the Court.

Chevalier **Descamps** explains that, at Mr. ROLIN's suggestion, the committee of examination has inserted the words "duly certified" before the word "copy" in the original text. He thinks that this formality will give the Bureau's archives greater authority.

His Excellency Mr. **Eyschen** remarks that it would be preferable to leave to the Permanent Council mentioned in Article 28 the question of the title to be given to the head of the International Bureau. He thinks that there are objections to giving him the title of secretary general, inasmuch as he will actually have the duties and responsibilities of a director. He therefore proposes that the words "and under the direction of a permanent secretary general" be stricken out.

Chevalier **Descamps** says that this provision goes back to his Excellency Sir JULIAN PAUNCEFOTE's original project. He recognizes the fact that it no longer fits in with the present organization of the International Bureau and, for his part, he can see no objection to leaving it to the Permanent Council to organize the administration of this Bureau as it sees fit.



Article 22 is adopted with the omission proposed by his Excellency Mr. EYSCHEN.

Article 23 is read:

Within the three months following its ratification of the present act, each signatory Power shall select four persons at the most, of known competency in questions of international law, of the highest moral reputation, and disposed to accept the duties of arbitrators.

The persons thus selected shall be inscribed, as members of the Court, in a list which shall be notified to all the signatory Powers by the Bureau.

Any alteration in the list of arbitrators is brought by the Bureau to the knowledge of the signatory Powers.

Two or more Powers may agree on the selection in common of one or more members.

The same person can be selected by different Powers.

The members of the Court are appointed for a term of six years. Their appointments can be renewed.

In case of the death or retirement of a member of the Court, his place is filled in the same way as he was appointed.

The members of the Court enjoy diplomatic privileges and immunities in the performance of their duties.

Count **de Grelle Rogier** asks for certain explanations with regard to the final paragraph of Article 23.

[18] The provision which grants diplomatic immunities to the members of the arbitral court may, in this concise form, give rise to a doubtful or too broad interpretation.

It would be well to know the exact meaning to be attached to the expression "in the performance of their duties." Did the committee of examination wish to indicate by these words that the members of the Court will enjoy the privileges of diplomatic immunity when they are actually sitting or from the time that they are designated to pass upon a difference up to the date on which the award is rendered?

If the latter interpretation were to prevail, it would give rise to rather serious objections, and it would be difficult to understand the advantage of such a privilege, which has never been enjoyed by international arbitrators up to the present time, and the lack of which has caused no inconvenience. Again, even limited diplomatic immunity could only be granted to the extent allowed by the constitutional laws of the several countries.

If, for example, the arbitral Court were to sit in Belgium, Count **DE GRELLE ROGIER** does not believe that the Belgian Constitution admits of granting the diplomatic immunities in question to those of its nationals who are members of that Court.

Chevalier **Descamps** says that the idea was that the immunities should apply to the arbitrators when they are actually sitting. In so far as the situation of arbitrators sitting in their own country is concerned, a reservation might be made, and the committee of examination will endeavor to find a formula to express it. It was desired especially to honor the position of arbitrator by assimilating it in the matter of prerogatives to that of diplomat.

Count **de Grelle Rogier** states that this explanation satisfies him.

Jonkheer **van Karnebeek** thinks that, in order to prevent in future difficulties which may present themselves more especially from the standpoint of his country, it would be well to mention clearly in the minutes, and even to define

in the committee of examination, the exact scope of the provision contemplated by Count DE GRELLE ROGIER.

The **President** says that, since the Commission appears to be in agreement at bottom, the committee of examination will endeavor to find a more precise formula, as desired by Mr. VAN KARNEBEEK.

Count **de Macedo** proposes that the Commission return to the maximum of two members of the Court to be appointed by each Power. He thinks that such a provision would give the tribunal greater authority.

Dr. **Zorn** explains that, if a maximum of four members has been proposed, this has been done in order to take into account the necessity for the great Powers to have in the arbitral Court representatives of different specialities — diplomats, soldiers, and juriconsults. He does not believe that his Government will change its opinion on this question, and he makes the most express reservations with regard to the amendment proposed by Count DE MACEDO.

Count **de Macedo** asks only that his amendment be referred to the committee of examination.

The **President** says that this will be done.

Dr. **Stancioff** asks for certain explanations in the matter of the freedom that will be left to the Powers in the selection of the arbitrators. Does Article 23 purposely omit to say, in conformity with Section 3 of his Excellency Sir JULIAN PAUNCEFOTE'S proposal, "persons of its nationality"? And does Article 23 mean that the persons whom a Power appoints as members of the Permanent Court may belong to another nationality?

Chevalier **Descamps** replies that it was not desired to restrict in any way the freedom of the Powers in this respect.

Mr. **Asser** feels that he ought to point out that Article 23, paragraph 5, provides that the same person may be chosen as an arbitrator by different Powers. This would be impossible if a Power could choose only its own nationals.

Article 23 is adopted, subject to these reservations.

Article 24 is read:

The signatory Powers which wish to have recourse to the Court for the settlement of a difference that has arisen between them choose from the general list the number of arbitrators upon which they have agreed by common accord.

They notify to the Bureau their determination to have recourse to the Court and the names of the arbitrators whom they have designated.

In default of a provision to the contrary, the tribunal of arbitration is constituted in accordance with the rules fixed by Article 31 of the present Convention.

The tribunal thus composed forms the competent court for the case in question.

It assembles on the date fixed by the parties.

- [19] Mr. **Rolin** says that he had proposed an amendment to this article with regard to which an agreement could not be reached because of lack of time. This amendment made the article read as follows:

The signatory Powers which wish to have recourse to the Court for settlement of a difference that has arisen between them choose from the general list of the members of the Court the arbitrators who are to form the arbitral tribunal.

They notify to the Bureau their determination to have recourse to the Court and the names of the arbitrators.

In default of a provision to the contrary, these arbitrators are appointed

in accordance with the rules fixed by Article 31 of the present Convention.

The arbitrators appointed form the arbitral tribunal for the case in question. It assembles on the date fixed by the parties.

Mr. ROLIN requests the Commission to take under consideration this amendment whose essential object is to make it perfectly clear that the tribunal does not come into existence until all the arbitrators, including the umpire, have been appointed.

Chevalier **Descamps** thinks that Mr. ROLIN's proposal, however interesting it may be, would so upset the arrangement of Article 24 that it would be regrettable to adopt it as it is formulated.

The **President** says that the committee of examination will examine Mr. ROLIN's proposal and, in case of a disagreement, the Commission will pass upon the question on the second reading.

Article 24 is adopted, subject to this reservation.

Article 25 is read:

The tribunal of arbitration sits ordinarily at The Hague.

Except in cases of necessity, the place of session can only be altered with the assent of the parties.

Chevalier **Descamps** points out an inconsistency between this article and Article 35 in the matter of the seat of the arbitral tribunal. There can be no difficulty, so far as the Permanent Court is concerned, whose seat, under the terms of Article 25, is The Hague. In the case provided for by Article 35 the designation of the seat of the Court is left to the parties; but if this designation is not made by formal agreement, it is understood that the seat of the court is The Hague. Moreover, the parties are always free to change this designation.

Mr. **d'Ornellas Vasconcellos** desires that the wording of this article may be sufficiently precise to be understood without a commentary and that it show more clearly the difference between the two cases. Therefore he proposes that the words "the tribunal" at the beginning of the article be changed to "this tribunal."

Chevalier **Descamps** thinks that it is important not to make these two articles overlap. The difference between the arbitral tribunal which is an emanation of the Court of Arbitration, and an arbitration tribunal formed by an agreement between the parties for a special case is readily understood. He favors keeping the article as it stands and, if necessary, mentioning Mr. **d'ORNELLAS VASCONCELLOS'** observation in the report.

Mr. **Asser** calls the Commission's attention to a deficiency which he has discovered in Article 25 and which he intends to lay before the committee of examination. It would be advisable to state that "the place of session can only be altered by *the tribunal* with the assent of the parties."

The Commission concurs in this point of view.

Article 25 thus amended is adopted.

Article 26 is read:

The International Bureau at The Hague is authorized to place its premises and staff at the disposal of the signatory Powers for the use of any special board of arbitration.

Powers which are not signatories of the present act may also have recourse to the jurisdiction of the Court under the conditions prescribed by the present Convention.

Mr. **Renault** asks for a modification, in the second paragraph of this article, which does not affect the meaning, but which makes it clearer. It is evident that the jurisdiction of the Court may be offered to non-signatory Powers; but in order to avoid any doubt in the matter of interpretation, it should be stated that non-signatory Powers may not apply to the Court until they have signed an arbitration *compromis*.

Mr. **RENAULT** proposes therefore that the second paragraph assume the following form:

The International Court may also be called upon to decide a dispute between non-signatory Powers, or between a signatory Power and a non-signatory Power, if these Powers have concluded a preliminary arbitration convention or a *compromis*, stating the intention of both of the parties to have recourse to this tribunal.

Chevalier **Descamps** says that the committee of examination will study the amendment, which has just been proposed, in conjunction with Mr. **RENAULT**.

[20] Article 26 is adopted, subject to this reservation.

Article 27 is read:

The signatory Powers consider it their duty, if a serious dispute threatens to break out between two or more of them, to remind these latter that the Permanent Court is open to them.

Consequently, they declare that the fact of reminding the parties at variance of the provisions of the present Convention, and the advice given to them, in the highest interests of peace, to have recourse to the Permanent Court, can only be regarded as in the nature of good offices.

Mr. **Beldiman** makes the same reservation with regard to this article as he made concerning Articles 15, 16, and 18.

His Excellency Count **Welsersheimb** states that he also reserves his opinion on Article 27.

The **President** officially acknowledges their reservations and declares Article 27 adopted.

Article 28 is read:

A Permanent Council composed of the diplomatic representatives of the Powers accredited to The Hague and of the Netherland Minister for Foreign Affairs, who will act as president, shall be instituted in this town as soon as possible after the ratification of the present act by at least six Powers.

This Council will be charged with the establishment and organization of the International Bureau, which will be under its direction and control.

It will notify to the Powers the constitution of the Court and will provide for its installation.

It will settle its rules of procedure and all other necessary regulations.

It will decide all questions which may arise with regard to the operations of the Court.

It will have entire control over the appointment, suspension or dismissal of the officials and employees of the Bureau.

It will fix the payments and salaries, and control the general expenditure.

At meetings duly summoned the presence of five members is sufficient to render valid the discussions of the Council. The decisions are taken by a majority of votes.

The Council addresses to the signatory Powers an annual report on the labors of the Court, the work of the administration and the expenditure.

Chevalier **Descamps** points out the two modifications which the original reading of this article has undergone in the committee of examination. The first consisted in substituting the word "accredited" for "resident" (paragraph 1); the second (same paragraph) fixed upon six as the minimum number of Powers that must have ratified the Convention in order to make it possible to constitute the Permanent Council.

His Excellency Count **Welsersheimb** is of the opinion paragraphs 2, 4, and 5 of Article 28 give the Permanent Council a freedom of action which is equivalent to a sort of sovereignty. In view of the importance of certain of this Council's powers, he thinks that the Governments should be able to exercise a certain measure of control over the operation of this institution and that the Council should therefore be obliged to make its decisions known to the respective Governments. It would follow that the decisions would not be valid until they had received the approval of these Governments.

Chevalier **Descamps** replies that the committee will look into these observations. He is, however, inclined to think at first blush that the modification requested by his Excellency Count **WELSERSHEIMB** would tend to impede the operation of the Council. He adds that, in his opinion, the present wording of the article insures all the guaranties that could be wished for. The Council is called upon to decide matters that do not seem to be of a character to be submitted to the approval of all the Powers. Moreover, it must not be forgotten that the Council must make an annual report on its work. This report will be addressed to all the Governments and will keep them posted on the action taken in all matters.

Chevalier **DESCAMPS** observes, in addition, that paragraph 4 empowers the Council to draw up its own regulations. This means that it will be entirely free to organize its work as it may see fit. There is nothing in these provisions that can give offense to the Governments, and it would be too much to require them to approve details of this kind.

[21] His Excellency Count **Welsersheimb** regrets that he cannot agree with this view. He still thinks that certain of the Council's functions are of great importance and that the Governments should reserve a right of control over them. As for the annual report, it contains nothing but accomplished facts which cannot be undone. The delegate of Austria-Hungary therefore requests that his proposal be referred to the committee of examination, in order that the observations which he has just made may be taken into account and the wording of the article modified.

The **President** says that this will be done. He adds that it follows from the explanations that have been given that the powers of the Council, as formulated in Article 28, contemplate measures of an administrative character only and do not permit any decision of a political or judicial character.

The committee of examination will endeavor to state this interpretation clearly.

Article 28 is adopted, subject to these reservations.

Article 29 is read:

The expenses of the Bureau shall be borne by the signatory Powers in the proportion fixed for the International Bureau of the Universal Postal Union.

This article is adopted.

The Commission passes to Chapter III (Arbitration procedure).

Article 29 *bis* is read:

With a view to encouraging the development of arbitration, the signatory Powers have agreed on the following rules which shall be applicable to arbitration procedure unless other rules have been agreed on by the parties.

This article is adopted.

Article 30 is read:

The Powers which have recourse to arbitration sign a special act (*compromis*) in which are clearly defined the subject of the dispute and the extent of the arbitrators' powers. This act implies an engagement of the parties to submit in good faith to the arbitral award.

This article is adopted.

Article 31 is read:

The duties of arbitrator may be conferred on one arbitrator alone or on several arbitrators selected by the parties as they please, or chosen by them from the members of the Permanent Court of Arbitration established by the present act.

Failing the composition of the tribunal by direct agreement of the parties, the following course is pursued:

Each party appoints two arbitrators, and these together choose an umpire.

If the votes are equally divided the choice of the umpire is entrusted to a third Power, selected by the parties by common accord.

If an agreement is not arrived at on this subject, each party selects a different Power, and the choice of the umpire is made in concert by the Powers thus selected.

Baron **Bildt** says that he had proposed an amendment to this article, which the committee of examination did not think it could accept.

This amendment read as follows:

Each party appoints two arbitrators, and these together choose an umpire.

Their choice must, however, be submitted to the approval of the parties, each of whom has the right to reject it without giving any reasons therefor.

In the latter case or if the votes are equally divided, the choice of the umpire is entrusted to a third Power selected by the parties by common accord.

Baron **BILDT** expatiates upon his amendment, emphasizing the necessity of expressly reserving to the parties the right to refuse or to accept the umpire.

Chevalier **Descamps** does not dispute the fact that Baron **BILDT**'s proposal is of interest, but he thinks it would be difficult to accept it. It would be dangerous in practice to establish a general right of approval. On the other hand, the rule laid down does not present any danger, and we may be sure that the parties will always be inspired by the views of their Governments in the selection of the umpire. However, the committee of examination is disposed to examine again Baron **BILDT**'s proposal.

Baron **Bildt** replies that an umpire who has been designated may have publicly expressed an opinion on the dispute which is submitted to him, thus laying himself open to rejection. This hypothesis must be taken into account.

[22] Baron **BILDT** asks, therefore, either that the formula of the amendment to Article 24 which Mr. **ROLIN** presented be applied to Article 31, or that men-

tion be made in the minutes of the fact that the Commission did not accept his proposal because it considered that it manifestly follows from the text of Article 31 that the parties are free to refuse or to accept the umpire.

Mr. **Martens** says that he cannot enter into the discussion until he has warmly congratulated Chevalier **DESCAMPS** on the exposition which he presented at the last meeting.

He recalls that the Russian delegation, in proposing the forty articles relative to good offices, mediation, and arbitration, and in suggesting the idea of instituting a permanent tribunal, was the first to furnish a solid basis for the discussions of the Commission.

These proposals have been examined in a sympathetic spirit and the Russian delegation considers it a special duty that devolves upon it to express its gratitude therefor.

In so far as the amendment presented by Baron **BILDT** is concerned, Mr. **MARTENS** thinks that it contains a principle contrary to established practice, sanctioned by time and experience. When two Powers agree to constitute an arbitration tribunal, the members of that tribunal almost always have the right to choose the umpire. That is the only method of procedure that Mr. **MARTENS** considers worthy of support and recommendable to the Governments.

An umpire who should be appointed by the Governments would find himself in a very difficult situation. But if the selection of their president is left to the arbitrators themselves, he will have much more authority than an umpire designated by the Governments after tedious diplomatic negotiations.

The umpire must not be forced upon the tribunal by the Powers; he must have their moral support and their entire confidence, and this result will be attained by following the method which has stood the test, namely, that of leaving the appointment of the umpire to his colleagues. As for the action of the Government in this choice, it will not be a negligible quantity, as seems to be feared; the arbitrators will not elect an umpire without consulting their Governments, who well know what men are most worthy of filling this position and will never advise the choice of an umpire who would not deserve the confidence of all.

Baron **Bildt** insists that his proposal be referred to the committee of examination.

The **President** says that this will be done and declares Article 31 adopted, subject to this reservation.

Article 32 is read:

When a sovereign or the chief of a State is chosen as arbitrator, the arbitration procedure is settled by him.

This article is adopted.

Article 33 is read:

The umpire is *ex officio* president of the tribunal.

When the tribunal does not include an umpire, it appoints its own president.

This article is adopted.

Article 34 is read:

In case of the death, retirement, or disability from any cause of one of the arbitrators, his place is filled in the same way as he was appointed.

This article is adopted.

Article 35 is read:

The tribunal's place of session is selected by the parties. Failing this selection, the tribunal sits at The Hague.

The place thus fixed cannot, except in case of necessity, be altered without the consent of the parties.

This article is adopted with the modification proposed by Mr. ASSER with regard to Article 25, namely, the insertion of the words "by the tribunal" after the words "be altered."

Article 36 is read:

The parties are entitled to appoint delegates or special agents to attend the tribunal to act as intermediaries between themselves and the tribunal.

They are further authorized to commit the defense of their rights and interests before the tribunal to counsel or advocates appointed by them for this purpose.

This article is adopted.

Article 37 is read:

The tribunal decides on the choice of languages the use of which shall be authorized before it.

[23] His Excellency Count **Nigra** observes that this article does not mention the language which the tribunal will use in its deliberations. He proposes that Article 37 read as follows: "The tribunal decides on the choice of the languages to be used by itself and to be authorized to be used before it."

Mr. **Martens** says that the Anglo-American arbitral tribunal sitting in Paris has foreseen the difficulty pointed out by his Excellency Count **NIGRA**. It has decided that its award shall be rendered in three languages: English, French, and Spanish; it is better to leave this point to the free determination of the tribunal. Mr. **MARTENS** calls the high assembly's attention to the fact that these same rules, which it has now under discussion, have already been put into execution by the Anglo-American arbitral tribunal, which has adopted unanimously a code of procedure of 24 articles that are entirely in conformity with the stipulations of the draft now being discussed by the Commission.

Chevalier **Descamps** says that the committee of examination will endeavor to insert, either in its report or in the text of the article, a formula that will meet the wishes of his Excellency Count **NIGRA**. Article 37 is adopted, subject to this reservation.

Article 38 is read:

As a general rule arbitration procedure comprises two distinct phases: pleadings and oral discussions.

The pleadings consist in the communication by the respective agents to the members of the tribunal and the opposite party of all printed or written acts and of all documents containing the grounds relied on in the case. This communication shall be made in the form and within the time fixed by the tribunal in accordance with Article 48.

The discussions consist in the oral development before the tribunal of the arguments of the parties.

This article is adopted.

Article 39 is read:



Every document produced by one party must be communicated to the other party.

This article is adopted.

Article 40 is read:

The discussions are under the direction of the president.

They are only public if it be so decided by the tribunal, with the assent of the parties.

They are recorded in minutes drawn up by the secretaries appointed by the president.

This article is adopted.

Article 41 is read:

After the close of the pleadings, the tribunal is entitled to refuse discussion of all new papers or documents which one of the parties may wish to submit to it without the consent of the other party.

This article is adopted.

Article 42 is read:

The tribunal is free to take into consideration new papers or documents to which its attention may be drawn by the agents or counsel of the parties.

In this case, the tribunal has the right to require the production of these papers or documents, but is obliged to make them known to the opposite party.

This article is adopted.

Article 43 is read:

The tribunal can, besides, require from the agents of the parties the production of all papers, and can demand all necessary explanations. In case of refusal, the tribunal takes note of it.

This article is adopted.

Article 44 is read:

The agents and counsel of the parties are authorized to present orally to the tribunal all the arguments they may consider expedient in defense of their case.

This article is adopted.

Article 45 is read:

[24] They are entitled to raise objections and points. The decisions of the tribunal on these points are final, and cannot form the subject of any subsequent discussion.

This article is adopted.

Article 46 is read:

The members of the tribunal are entitled to put questions to the agents and counsel of the parties, and to ask them for explanations on doubtful points.

Neither the questions put, nor the remarks made by members of the tribunal in the course of the discussions can be regarded as an expression of opinion by the tribunal in general, or by its members in particular.

This article is adopted.

Article 47 is read:

The tribunal is authorized to declare its competence in interpreting the *compromis* as well as the other treaties which may be invoked in the case, and in applying the principles of international law.

This article is adopted.

Article 48 is read:

The tribunal is entitled to issue rules of procedure for the conduct of the case, to decide the forms and time in which each party must conclude its arguments, and to arrange all the formalities required for dealing with the evidence.

This article is adopted.

Article 49 is read:

When the agents and counsel of the parties have submitted all the explanations and evidence in support of their case, the president pronounces the discussion closed.

This article is adopted.

Article 50 is read:

The deliberations of the tribunal take place in private.

Every decision is taken by a majority of the members of the tribunal.

The refusal of a member to vote must be recorded in the minutes.

This article is adopted.

Article 51 is read:

The award, given by a majority of votes, must state the reasons on which it is based. It is drawn up in writing and signed by each member of the tribunal.

His Excellency Count **Nigra** is of the opinion that there are omissions in this article which should be supplied:

(1) The arbitral award should mention also the dissenting votes.

(2) The tribunal should be empowered to fix the time within which the award must be executed.

Mr. **Martens** says that, as regards the obligation to give the reasons on which the award is based, he can accept this requirement as a jurisconsult, but as a practical man he must reject it. He desires to submit to the Commission certain observations on this subject which he thinks deserve very careful consideration. If the arbitrators in a large arbitral tribunal agree in recognizing the wrongs committed by their own Government, they may in all good conscience concur in the award of the majority; but if they are forced to give the reasons for this award and thus to criticize the policy and measures of their Government, they will find it impossible to sign the award, and the operation of arbitration will thus be impeded. As for the setting forth of the reasons, the case is not the same in the matter of an arbitral award as in the matter of the judgment in a civil suit. The conditions under which the two decisions are rendered are not the same, and circumstances may arise in which the obligation to give the reasons on which the award is based would be an obstacle in the way of an absolutely just decision.

Mr. **MARTENS** adds that the Anglo-American tribunal which is now sitting in Paris has not admitted the obligation in question.

As the committee of examination does not share his point of view on this question, Mr. **MARTENS** desires to explain his position to the Commission.

[25] It is possible that the latter will adopt the committee's view; but in that case Mr. **MARTENS** will console himself with the adage: "*Dixi et salvavi animam meam.*"

Chevalier **Descamps** says that the committee was not in agreement on this

question. For his part, he thinks that the requirement to give the reasons on which the award is based constitutes a fundamental guaranty. There are questions which cannot be settled by yes or no, and the grounds for the decision justify the award. There is no instance of an award's being rendered without being accompanied by the reasons which dictated it.

Chevalier DESCAMPS does not believe that the difficulties pointed out by Mr. MARTENS are insurmountable and irreconcilable with the obligation of giving the reasons for the award. The forms and measures are left to the judgment of the tribunal. Moreover, if the States wish to provide for cases in which there might be serious objections to stating the reasons on which the award is based, they are free to allow their arbitrators to dispense with this formality.

Mr. Martens replies that, if it is desired to leave to the Governments or to the arbitral tribunals themselves the right to decide this matter, there is no longer any objection; but he repeats that this obligation should not be imposed upon the tribunal.

Dr. Zorn warmly supports Mr. DESCAMPS' opinion. He says that arbitral awards must be legal decisions, and a legal decision without the reasons on which it is based is inconceivable. The reasons may, if necessary, be set forth briefly; but they cannot be altogether dispensed with.

Mr. Rahusen also supports Mr. DESCAMPS' opinion. He thinks that the force of an arbitral decision lies in the grounds on which it is based rather than in the decision itself. Furthermore, it would be impossible to found a complete international jurisprudence on arbitral awards that do not contain the reasons in support thereof.

The President explains that the obligation of giving the grounds for the award does not imply any rule as to the form in which they must be presented. The tribunal will be at liberty to formulate the reasons briefly or at length as it may see fit. Mr. BOURGEOIS thinks that this may meet Mr. MARTENS' wishes.

Chevalier Descamps desires to explain another matter brought up by his Excellency Count NIGRA: the time within which the award must be executed. There will be cases in which certain States may postpone the execution of the arbitral decision. It would therefore be advisable to leave it to the judge to determine the time, a right which he will take advantage of or not according to the case.

Mr. DESCAMPS believes that it would be well for the committee to consider in what way his Excellency Count NIGRA's wishes might be met on this point.

The President says that the committee of examination might submit a formula on the second reading.

Mr. Rolin insists that the reasons for the vote of the minority be given in the arbitral award.

Chevalier Descamps replies that this would give the appearance of there being two judgments and of laying the dissent of the arbitrators before public opinion. The dissenting arbitrators are allowed to state their dissent, but it would not be safe to go further than that.

His Excellency Count Nigra would like to provide for the case of an arbitrator's refusing to sign the award. It should be stated that such refusal does not invalidate the award nor retard its execution.

Chevalier Descamps says that this is manifest, but that an arbitrator is bound to sign the award. He is free to state his dissent; but, if he refuses to sign, he is failing in his duty.

Mr. **Martens** recalls that the provision of Article 51 has been adopted by the Anglo-American tribunal sitting in Paris.

Mr. **Rolin**, though still of the opinion that it would be preferable if the arbitrators who do not concur in the award were invited to state officially the reasons for their dissent, does not consider this absolutely necessary. Mr. **ROLIN** therefore refrains from presenting a formal amendment. He presumes that the arbitrators who are unable to give the reasons for their views on the spot, after the rendering of the award, will not fail to do so without delay in their reports to the Governments or even in the press. The drawback of having the dissent of the arbitrators brought to public notice will therefore not be completely prevented, whatever may be the reporter's opinion, and that is why Mr. **ROLIN** deemed it preferable to limit at the outset the object and the scope of the dissent by inviting the arbitrators who do not concur in the award to give on the spot the reasons for their dissenting vote.

The **President** says that Article 51 is adopted, subject to his Excellency Count **NIGRA**'s proposal relative to the time of execution.

Article 52 is read:

The award is read out at a public sitting, the agents and counsel of the parties being present, or duly summoned to attend.

[26] This article is adopted.

Article 53 is read:

The award, duly pronounced and notified to the agents of the parties at variance, settles the dispute definitively and without appeal.

This article is adopted with the omission, requested by Mr. **RENAULT**, of the words "at variance."

Article 54 and Mr. **ASSER**'s proposal are read:

Unless stipulated to the contrary in the *compromis*, revision of the arbitral award may be demanded of the tribunal which rendered it, but only on the ground of the discovery of some new fact which is of a nature to exercise a decisive influence upon the award and which, at the time the tribunal entered its decree, was unknown to the tribunal and to the party demanding the revision.

Proceedings for revision can only be instituted by a decision of the tribunal expressly recording the existence of the new fact, recognizing in it the character described in the preceding paragraph, and declaring the demand admissible on this ground.

No demand for revision can be received unless it is formulated within three months following the notification of the award.

Mr. **ASSER**'s proposal:

The parties can reserve in the *compromis* the right to demand the revision of the award.

In this case, and unless there be an agreement to the contrary, the demand must be addressed to the tribunal which pronounces the award and only on the ground of the discovery of some new fact which is of a nature to exercise a decisive influence upon the award and which, at the time the tribunal entered its decree, was unknown to the tribunal and to the party demanding the revision.

Proceedings for revision can only be instituted by a decision of the tribunal expressly recording the existence of the new fact, recognizing in it

the character described in the preceding paragraph, and declaring the demand admissible on this ground.

No demand for revision can be received unless it is formulated within six months following the notification of the award.

Mr. **Asser** explains his proposal. The principle of revision was adopted by a slight majority after a long discussion by the committee of examination. It was Mr. **Holls** who had inserted it in his project for a permanent tribunal and who had energetically and lucidly set forth the great importance of this means of revision. Serious objections were raised in opposition to his arguments: The award once rendered, would not its moral *force* be diminished? Again, it was observed that this was not a question of an appeal, but of an exceptional case, in which a new *fact* had been discovered. Mr. **Asser** long hesitated between these two arguments. Having carefully weighed the matter, he decided upon a compromise system.

It is here a question of principle and of establishing rules of procedure. If Article 54 is omitted, the very idea of revision is rejected. We must endeavor to *save* the principle, while meeting the wishes of those who do not want to weaken *a priori*, by means of a treaty provision, the moral force of arbitral awards. The wording he proposes does not imply a right of revision as a natural consequence in every arbitration case, but it allows the parties to reserve this right expressly and, if they do, it fixes the rules and procedure to be followed.

Mr. **Martens** delivers the following address:

During the entire course of this Conference you have always honored me with a most respectful attention, whenever I deemed it necessary to intervene in the discussion, for the purpose of dissenting or explaining the ideas which have been put upon the program. I thank you most sincerely.

Permit me once more at this time to count upon such good-will, and I beg your most serious attention, because the question which now occupies us is one of the very greatest importance. It is a vital question for the entire institution of international arbitration, which is certainly dear to all of our hearts.

The honorable gentleman who has just spoken, my friend Mr. **Asser**, has said that it is necessary to save the principle of a rehearing of the arbitral award. I regret infinitely not to be able to share his opinion. I am a member of the society for the relief of the shipwrecked and of the Red Cross, but in this present case I deem it my duty to be cruel and inhuman. I cannot lend Article 55 a helping hand, and I hope from the bottom of my heart that it may be wrecked upon the hospitable shores of Holland.

But, gentlemen, in what does the importance of this question consist? Is it true that a rehearing of a judicial award based upon error or upon considerations not sufficiently founded is not desirable? Ought we not, on the contrary, to wish to have an error corrected by new documents or new facts which may be discovered after the close of the arbitration?

No, gentlemen, it would be most unsatisfactory and unfortunate to have an arbitral award, duly pronounced by an international tribunal, subject to re-  
[27] versal by a new judgment. It would be profoundly regrettable if the arbitral award did not terminate, finally and forever, the dispute between the litigating nations, but should provoke new dissensions, inflame the passions anew, and menace once more the peace of the world. A rehearing of the arbitral award, as provided for in Article 55, must necessarily have such a disastrous

effect. There should not be left the slightest doubt on this point. The litigating Power against which the arbitral award has been pronounced will not execute it, certainly not during the three months, and it will make every effort imaginable to find new facts or documents. The litigation will not have been ended, but it will be left in suspense for three months with the serious aggravation that the Government and the nation which have been found guilty will be drawn still more into recrimination and dangerous reciprocal accusations. That is the explanation of the significant fact that in the committee of examination Article 54 was adopted by only 5 votes to 4.

The end of arbitration is to terminate the controversy absolutely. The great utility of arbitration is in the fact that from the moment when the arbitral judgment is duly pronounced everything is finished, and nothing but bad faith can attack it. Never can an objection be raised against the execution of an arbitral award. Now, if we accept the principle of a rehearing, what will be the rôle of the arbitrators before and after the award? At the present time they are able to end forever an international dispute, and experience has shown that as soon as the award has been rendered, newspapers, legislative chambers, public opinion, all bow in silence to the decision of the arbitrators.

If, on the contrary, it is known that the award is suspended for three months, the State against which judgment has been given will do its utmost to find a new document or fact.

In the meantime the judgment will be delivered over to the wrangling of public opinion. It will not settle or put an end to the matter. On the contrary, it will raise a storm in press and parliament. Everything will be attacked — the arbitrators, the hostile Government, and above all the home Government. They will be accused of having held back documents and concealed new facts.

For three months the discussion upon the judgment will be open. Never can a judgment given under such conditions have the moral binding force which is the very essence of arbitration.

Moreover, the arbitrators will not have the same feeling of responsibility as when by one word they are able to *terminate* a controversy between two nations.

This idea of a rehearing is the most fatal blow which could be struck against the idea of arbitration. Apropos of my remark at the beginning of this meeting, I applied to myself the words "*Dixi et salvavi animam meam.*"

I now change them and say "*Dixi et salvavi arbitrationem.*"

His Excellency Count **Nigra** remarks that the Commission is confronted by two opinions, both of them too absolute in character. There is a great deal of truth in Mr. MARTENS' arguments, but an *error* is always possible, and if there has really been an error that is manifest to public opinion, how can we require that it be sanctioned; how can we refuse to rectify it? On the other hand, the wording of Article 54 appears to be too broad in scope. The expression "of some new fact which is of a nature to exercise a decisive influence" is not precise enough and does not sufficiently define the cases subject to revision.

The instructions of the Italian Government compel it to favor revision. If the principle of revision is retained, it seems to it preferable to adopt the text of the Italo-Argentine treaty (Article 13), which limits the grounds for revision to the facts already presented in the cause in the two following cases:

(1) If the award has been rendered on the strength of a forged or erroneous document.

(2) If the award, in whole or in part, is the consequence of a positive or negative error of fact, resulting from the acts or documents in the case.

Mr. HOLLIS answers Mr. MARTENS in the following speech, a running summary of which is made by Baron D'ESTOURNELLES:

I cannot forbear to express, at the outset, the great reluctance and hesitation with which I find myself in disagreement, on a question of such great importance, with the gentleman who may perhaps be called the most eminent representative in the entire world of the idea of arbitration, the president of the one tribunal of arbitration which is sitting at present, our most honorable colleague from Russia, Mr. MARTENS. If there were in my mind the slightest doubt as to the soundness of the proposition which is at present before us, I would be inclined to dismiss all further consideration and assent to the opinion of an authority so eminent, especially when that opinion is expressed with so much force and eloquence. But all of my hesitation does not prevent me from expressing my very great surprise at the arguments of which Mr. MARTENS has just made use. In effect, they show to my mind that he has completely misunderstood the proposition which has been inserted at the request of the United States of America into the code of arbitral procedure.

[28] I agree most emphatically with all that Mr. MARTENS has said about the necessity of putting a definite end to international litigation. In differences between States, the maxim "*interesse populi ut sit finis litium*" is even more true than in those between individuals. The supreme end of arbitration is, as Mr. MARTENS said, to settle definitely the questions upon which recourse has been had, and everything which unreasonably retards the decision or leaves it in suspense will be objected to, most decidedly, by the delegates of the United States as well as by him.

Moreover, Mr. PRESIDENT, our proposition for a rehearing is by no means based upon a fantastic idea, as though it were possible to evade or correct all the errors which must occasionally slip into arbitral decisions. We by no means ignore the fact that error is and always will be an inherent element in every human institution or decision.

Our point of view is eminently practical, and this is the theory upon which the article proposed by us reposes. It is above all extremely desirable and even necessary that the project of arbitration which this Conference is about to propose to the world should provide for the possibility of rectifying evident errors, in a regular and legal manner, without incurring the danger of having the decision repudiated by the aggrieved party.

Permit me to say at this point that the importance of our article does by no means solely repose upon its practical effect in each case, but perhaps even more in the circumstances that it will constitute an important feature of the general project of arbitration which is being elaborated by the Conference. Everything which we are creating here has a general, voluntary, and facultative character. We are not occupied at the present time with rules for any particular difference whatever. It will soon be the duty of the members of this Conference to appear before their different peoples and explain to them the projects which we have elaborated with so much labor and so much care. According to the view of the American delegation, this project will contain a fatal omission if it does not provide any method whatever for dealing with an evident error. For we

may be sure that if this article shall not be adopted, and a manifest error shall hereafter be discovered, the aggrieved party which loses its case will not accept the decision with good grace, even if it may yield to force. There is a limit to the principle established by Mr. MARTENS, that the chief end of arbitration is to settle forever the questions about which it has been invoked. That limit has been well declared by our American statesman, ABRAHAM LINCOLN, in his celebrated saying, "Nothing is settled until it is settled right." Our article seems to find a golden mean between two extreme dangers, that of perpetuating an injustice, and that of leaving a difference unsettled.

The objection has been raised that the new fact might be discovered one day after the expiration of the term fixed by the article. But this possibility is an inconvenience which exists always when an arbitrary term is fixed for any end whatever, and it will exist in equal measure if we adopt a period of six months in place of three. The theory upon which our article is based, so far as this point is concerned, is that immediately after the rendering of the decision it is subjected to criticisms and investigations of the most minute character, and then, if ever, is the opportunity for discovering new facts or important errors.

It may well be, as Mr. MARTENS has said, that the criticism to which the arbitral decision will be subjected in this manner will take the character of an attack, and may cause discussion in the journals and pamphlets in a form most undesirable. But, on the other hand, it is also true that the decision will be examined most minutely by all the experts of international law in the entire world, and by all those who, on account of their public or private position, have followed the proceedings of the litigation and who are interested in it and in its result. This is the best guaranty possible for the discovery of any hidden fact which might have the effect of correcting an error, or of making reparation for an injustice.

New facts cannot be forged nor manufactured, at least not by civilized Governments. In fact, every Government will hesitate to expose its country to the humiliation which would undoubtedly attach to an unsuccessful attempt for a rehearing of the litigation upon a pretended discovery of new facts, the existence of which would be denied by the tribunal.

Moreover, one should not lose sight of the fact that for the purpose of having a rehearing, the very tribunal, composed of the same judges who have pronounced the award must declare that a manifest error has been committed. This is saying, in other words, that the new fact which has been discovered is of a nature to have influenced the decision of the tribunal.

Before the decision has been rendered it is not always possible to know what species of fact or what argumentation has made the greatest impression upon the judges and has determined their decision.

Take, for example, the question in controversy at this moment before the court of arbitration of which our honorable colleague from Russia is acting so worthily as president — the question of the frontier between British Guiana and Venezuela. In this case the delay of three or six months could not be truly called anything but minimal, in view of the fact that this difference has existed and gone on for three or four years, and, in a form more or less obscure, for more than eighty years. It would therefore be unimportant whether the decision should be rendered on the first of October or the first of January, by comparison with the danger arising from a manifestly erroneous or unjust decision. Among other things this controversy implies the interpretation



of treaties made more than two hundred and fifty years ago; it includes a great number of historical precedents, or questions about colonization, of jurisdiction over the barbarous tribes, as well as questions of the weight and authority to be given to different maps. Upon these latter both parties will lay great stress, in order to prove that their contentions have already been recognized and admitted. Up to the moment of the decision of the tribunal it will be impossible to know what kind of facts and what argumentation have determined the award. Now the seeking of new facts is limited to that category. If that inquiry should be successful, for example, if a new map or a new document of incontestable and unquestioned authority should be found, it is evident that the interested party would refuse to submit to an award which could not be rectified in a legal and regular manner.

I confess that I was greatly astonished to hear Mr. MARTENS say that the moral authority of the Court of Arbitration would be impaired by our article, and that the sentiment of responsibility would disappear in the minds of the arbitrators. On the contrary, I maintain that the moral authority of the judgment will be enhanced by the fact that there is in existence a provision for correcting errors, of which the losing party may take advantage, during a term which should not be too long, and that at the end of that term the civilized world ought to admit, and surely will admit, that substantial justice was done between the two parties. Furthermore, the responsibility of the arbitrators is enhanced rather than diminished by their power and their duty to reconvene again upon their judgment in a proper case.

It seems to me that Mr. MARTENS most assuredly made a mistake in saying that tradition and the force of precedent is opposed to a rehearing in cases of arbitration.

I must admit that in all the treaties of arbitration for special cases up to this time, there has not been a provision for a rehearing, and in the particular special treaties of the future there will no longer be any necessity for it. The reason for this is that the entire idea of arbitration is relatively new, and that it has hitherto been considered only as a temporary method of settling controversies as they arose. The only general treaty of arbitration which has been ratified, and which is to-day in force, is that concluded between the Kingdom of Italy and the Argentine Republic. This provides for a rehearing, showing the tendency of public opinion and also of the most competent opinion of experts in international law.

But, as I have already said, our duty in this Conference is not to legislate for particular cases, but to uphold an ideal, to declare to the world that which the representatives of all the civilized nations consider desirable and practically attainable. We cannot possibly put professional regularity or pedantic rules of procedure above the attainment of substantial justice. We have succeeded, after much labor and by reason of mutual concessions, in elaborating a project for the peaceable settlement of international conflicts. It is of the last importance that this project should contain, however simply, at least all essential features guaranteeing in the greatest possible measure international justice.

The representatives of the United States of America considering this article, or some other provision equally efficacious to rectify manifest errors, as an essential part of an acceptable project, would have to ask for new instructions from their Government, giving them power to join their colleagues of the Conference in any plan which should not contain a similar provision. It is for this reason

that they make a most warm and urgent appeal to the committee to leave intact the principle expressed in the article proposed in the name of the Government of the United States.

Chevalier **Descamps** has listened very attentively to the two series of arguments in the matter of revision.

In his opinion, the difficulty arises from the conflict of principles, equally worthy of respect, that have been advanced by both sides.

Justice must be done; how then can we accept the sanction of an evident error?

Suits between nations must be terminated and differences between them must not be allowed to drag on indefinitely. How are we to attain this result if we leave the door open for new judgments?

The advocates of revision have the nobler and finer side. Their conception of justice is perhaps loftier than that of their opponents; but the latter are especially impressed with the fallibility of all human judgments and think that we must not compromise the force and stability of that justice, in order to redress exceptional errors. Is it not to be feared that under the pretext of preserving justice in rare cases, we may compromise it in all cases?

The partisans of revision do not appear to have placed the question where it belongs. In the domain of *general* rules applying to all controversies between States, should we formulate a principle that threatens to undermine [30] the very institution of arbitration? The more natural thing would seem to be to set forth in an international code only the principles that strengthen the institution. Contracting parties who have scruples, from the point of view of justice, similar to those of the United States should provide for revision in a special *compromis*. No revision, which is in conformity with the efficacy of arbitration, must be the rule and revision the exception.

By admitting revision as a general rule we should be rendering the Governments a very poor service: they would be threatened with the danger of no longer being masters at home; their hands would be forced; popular opinion would want them to invent new facts in order to reopen an arbitration case that had been decided against them.

The **REPORTER** thinks therefore that it would be dangerous and difficult to introduce a provision similar to Article 54 in a general code of arbitration. He hopes that Mr. **ASSER**'s moderated reading will not be admitted. However, if it should become a question of obtaining unanimity, he would support Mr. **ASSER**'s proposal in a conciliatory spirit.

Mr. **Martens** asks permission to put certain questions.

What will the situation of the arbitrators be during the suspensive period of three or six months? If the Government which has not won the case, harassed and summoned by public opinion to find a new fact, succeeds in reopening the suit, where will it find arbitrators?

The members of the arbitral tribunal are scattered here and there; they may be absent, sick, dead. What will it do then?

We must distinguish between two points of view: from that of the jurisconsult there is no doubt that revision and even appeal should be demanded. From that of the practical man the love of peace carries the day. To preserve peace he would have all disputes cut short by some radical means. The pacification of two nations is so important in his eyes that he does not wish to run the risk of

jeopardizing it in order to protect certain material interests that may possibly be injured.

He feels it necessary to take this last point of view and therefore asks the Commission to vote against Article 54.

Mr. **Seth Low** delivers the following address, which Mr. **RAFFALOVICH** sums up in French:

In the organization of ordinary justice in almost all the countries represented here, if not in all, a recourse for the purpose of rectifying errors has been provided. This precaution has been taken because experience has shown that such recourse, or rehearing, or revision increases the chances of doing substantial justice between men.

I know that our international arbitration is not like the questions of *ordinary* justice. It does imply, as Mr. **MARTENS** has said, the idea of ending international controversies in the interest of peace, even if the solution may be imperfect.

But the necessity of accepting in such a large measure this imperfection is precisely the weakness, and not the strength, of arbitration.

I recognize, as some one has said, that all arbitration which has occurred up to this time has been in virtue of an agreement that has not foreseen or provided for a rehearing. But, on the other hand, the Conference will remember that in the only two treaties which contain a clause for permanent arbitration — the Italo-Argentine treaty, to which reference has already been made, and the Anglo-American treaty, which was not ratified — a provision was inserted for the purpose of permitting a rehearing under certain determined conditions.

This signifies, as I suppose, that a system of permanent arbitration as distinct from special arbitration in isolated cases necessarily implies the idea of making justice as perfect as possible, and that this idea should be balanced with the desire of terminating the controversy.

I have confidence and hope that this Conference will receive and adopt the idea of a rehearing with the necessary precaution, for it is certain that arbitral procedure should admit the possibility of error, if the great number of judgments of arbitration are to develop in the future into one grand system of international justice.

Mr. **Asser** recalls the remark made by one of the previous speakers, "Radical measures are the best." This may be so in a parliament, where the majority rules, but in an assembly like this, which may be termed an international parliament, we are often called upon to reach a compromise.

That is the aim of his proposal. He has taken into account all the good reasons put forward by both sides. The partisans of revision will find their wishes met by an article that determines the procedure to be followed in a second hearing and designates it as a practical means within the reach of all the States.

The partisans of no revision also will be satisfied by the exclusion of revision unless there is a special clause in the *compromis*. If the *compromis* contains nothing on the subject, the arbitral award will be irrevocable.

Mr. **Corragioni d'Orelli** states that the delegation of Siam could not vote for [31] the principle of revision either in the form proposed by the American delegates or in that proposed by Mr. **ASSER**, unless the time within which revision may be demanded were fixed at six months instead of three. He does not need to dwell upon the reasons for this restriction. Difficulties may arise as a result of the distance at which the arbitral tribunal is sitting. The time within

which revision may be demanded is calculated from the date of notification, which is given in the city where the tribunal is meeting.

Jonkheer van Karnebeek has listened attentively to what Messrs. HOLLIS and LOW have had to say. His opinion has not changed and he remains convinced that revision is dangerous. Moreover, all the arguments of the American delegates concerned not a *revision*, but an *appeal*. Now, we are almost all of the opinion that there can be no question of appeal.

Another objection is the determination of the procedure to be followed. There is mention of a "new fact"; but there is nothing more difficult to define. Every legislation has been confronted by this obstacle. Let us not introduce in international relations difficulties that have already proved so great in municipal law.

Although he remains convinced of the danger of revision, he would nevertheless favor the compromise proposal of Mr. ASSER; but in that case the delay of 6 months must be reduced to 3 months, since the former would leave the pending questions open too long.

Mr. HOLLIS states that the American delegation concurs in the wording of Article 54 proposed by Mr. ASSER.

But it proposes an amendment to the effect that the *time* shall be determined in every case by the parties.

Chevalier DESCAMPS, Mr. CORRAGONI D'ORELLI, Mr. ASSER, Mr. MARTENS, and Count NIGRA concur in this amendment.

Mr. ASSER's proposal is thus amended and adopted unanimously.

Baron BILDT points out an omission: the text does not take into account a new fact that may come to light between the close of the pleadings and the rendering of the judgment.

The President says that this very proper observation will be taken into account.

Article 55 is read:

The award is only binding on the parties who concluded the *compromis*.

When there is a question of interpreting a convention to which Powers other than those concerned in the dispute are parties, the latter notify to the former the *compromis* they have concluded. Each of these Powers has the right to intervene in the case. If one or more of them avail themselves of this right, the interpretation contained in the award is equally binding on them.

This article is adopted.

Article 56 is read:

Each party pays its own expenses and an equal share of the honoraria of the arbitrators and of the expenses of the tribunal.

Mr. HOLLIS reserves his opinion with regard to this article until the second reading.

This article is adopted.

It is decided that the committee of examination shall meet on Tuesday at 2 o'clock and the Third Commission on Wednesday at 10 o'clock.

The meeting adjourns.

## SIXTH MEETING

JULY 19, 1899

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Mr. **Léon Bourgeois** presiding.

Proofs of the minutes of the fifth meeting are distributed among the delegates, and the minutes are adopted subject to such corrections as they may subsequently find necessary.

The discussion opens on Section 3, which had been reserved on the first [32] reading of the draft, in order to allow the delegates of Roumania, Serbia, and Greece to secure instructions from their Governments.

The first delegate of Roumania, Mr. **Beldiman**, speaks as follows:

The task which devolves upon me to-day is not an easy one, I must admit, for it runs counter to the current of opinion which has grown in this high assembly under the influence of authorities that are incontestable, authorities of the first magnitude in the matter of international law. I even anticipate that we shall have against us all the notable figures in the science of international law whom we are so justly proud to see among the members of the Conference. I confess that under these conditions the contest would be a very unequal one, if it were to be exclusively in the domain of this science. But I am encouraged by the fact that when it is a question of concluding international stipulations which directly affect the mutual relations of States, the doctrine of international law cannot of itself decide in the last resort; it must be in harmony with the legitimate interest of the policies of the States concerned.

Before taking up these questions, I desire first of all to state, in the name of the Royal Government, that after mature reflection it is not prepared to adhere to the articles concerning international commissions of inquiry provided for in Section 3 of the draft Convention.

This decision rests upon considerations of various kinds which I shall take the liberty of setting forth at greater length, in view of the seriousness of this question to us.

While sincerely regretting that we are obliged to declare against the new institution of international law, which the Commission is endeavoring to create, I am, on the other hand, happy to note that Roumania is not the only country to raise serious objections in the matter of principle on this subject.

Our point of view is entirely shared by both Greece and Serbia, and the Governments of these States, which have so many interests in common with us, likewise think that the draft Convention would gain much if it did not contain the section concerning international commissions of inquiry.

As for the exposition which I shall have the honor to set forth, it is of course understood that I am speaking only in the name of my Government.

I repeat, gentlemen, the Royal Government did not resolve upon its course until after long and mature reflection. It considered all eventualities; it would certainly have preferred not to intervene in these debates in such an incisive manner. But the responsibility it would incur by accepting these provisions was too great and it could not adhere to a stipulation which it considers prejudicial to the rights and interests of our kingdom. It is therefore in the performance of an imperative duty that the Roumanian Government has given me the instructions which I have the honor of interpreting.

It is also for the same reasons that I ask you to allow me to go back a few years and to dwell upon the general spirit which animates my Government with regard to the great and noble work for which we are here assembled.

Since we are solicitous that there shall not be the slightest doubt as to the attitude of Roumania on this occasion, I shall call your attention to certain official documents.

In the first place, allow me to quote briefly from the reply of the Roumanian Government, dated January 14/26, 1899, to the circular of his Excellency Count MOURAVIEFF of December 30 last, which reply was signed by Mr. DEMETRIUS STURDZA, then President of the Council and Minister of Foreign Affairs.

After recalling the profound impression, the great furor, which the noble and magnanimous initiative of His Majesty the Emperor NICHOLAS II had produced throughout the world, the note sums up the three dominant ideas of the program which his Excellency Count MOURAVIEFF communicated to the cabinets and which has become the basis of the work of the Conference.

The Minister continues:

The Government of His Majesty King CHARLES, my august master, on analyzing with the most sympathetic attention the program in question, cannot but adhere thereto and express an eager and sincere desire to see it favorably received by all the States invited to the Conference.

The note concludes as follows:

Be good enough, therefore, Mr. Minister, to say to Count MOURAVIEFF that the Royal Government, which is so deeply interested in the maintenance of peace, cannot but adhere with the keenest satisfaction to the program proposed as a basis for the discussions of the Conference, and to inform his Excellency at the same time of the points of view which I have just set forth and which aim to spread continually and in a practical manner among the peoples of the earth the principle of the solidarity of States, which is indispensable to the maintenance of universal peace, which His Majesty Emperor NICHOLAS II considers one of the most deeply felt and urgent needs of the prosperous life of nations.

The instructions relative to the participation of the Roumanian delegates in the work of the Conference were given to us by Mr. D. STURDZA's successor in the Department of Foreign Affairs, Minister JOHN LAHOVARI, under date of April 28/May 10, 1899.

[33] They begin as follows:

TO THE ENVOYS: Now that the deliberations of the Conference that is to meet at The Hague as the result of the generous initiative of His Majesty the Emperor of Russia are about to open, with a view to ensuring to all peoples by an international agreement the benefits of a real and lasting peace,

and before all else to put an end to the progressive growth of modern armaments, it is necessary, in the first place, to point out to you in a general way the spirit in which the Government of His Majesty the King of Roumania has accepted the invitation extended to him and from which you must draw your inspiration in participating in the proceedings.

As regards the goal upon which the Emperor NICHOLAS has fixed his gaze and which will entitle that sovereign for all time to the gratitude of history, the Royal Government, in harmony, I am pleased to state, with all peoples and all Governments, applauds the generous views of His Majesty and will endeavor to contribute with all its power to the success of the work of the Conference.

Roumania more than any other nation needs to enjoy for a long time to come the benefits of peace, in order to repair the injuries which long centuries of calamity have inflicted upon her. The wise, well-balanced, and peaceful policy from which she has never deviated since she won complete independence, her constant efforts to develop her resources, the great works that she has undertaken in every corner of her territory are the surest guaranties of the sentiments that animate the sovereign and the nation.

It is therefore with keen satisfaction and the most sincere desire to see the labors of the Conference bring forth positive and effective results that we are sending our representatives to take part in its deliberations.

And further on, after mentioning the natural difficulties which will necessarily follow from the discussion of one of the greatest and most important problems in the common life of peoples, our Minister goes on to say:

It is no less our duty to endeavor to aid sincerely the efforts of those who have undertaken so noble a task, to respond with eagerness to the appeal addressed to the secondary Powers of Europe. And since in questions which raise so many and such great difficulties the most complete solutions are not the most practicable, I think that in a general way you should always try to support with word and vote those proposals which, though they may not be the most desirable, are the most acceptable to all.

Such, gentlemen, is the general spirit which from the start has animated my Government in the matter of the important humanitarian problems brought up by the generous initiative of His Majesty the Czar.

Such also was the spirit which prompted the instructions that we have received. It is not for me to judge whether in the course of our work here together the Roumanian delegation has sufficiently acquitted itself in the prescribed direction of the task, honorable yet laden with responsibility, which devolved upon it. In any event, it has not been wanting in good-will.

But what is much more important, what I desire to make clear above all, is the unboundedly favorable attitude which the Royal Government has never ceased to take with regard to the program and the work of the Conference — its sincere desire to be of service to this great cause.

It would not have been necessary for me to dwell upon this point, if I were speaking only to the members of this high assembly, who are in a position to know and to judge of the Roumanian Government's intentions.

Our debates are well-nigh public, and outside of the Conference there has been a certain tendency to suspect, even to distort, what does not suit those who have constituted themselves censors of our work, censors who feel the more at ease since we have no protection against them. This tendency, which I refrain

from characterizing, manifested itself with respect to us even before we had occasion to lay before the Conference the views of the Roumanian Government on international commissions of inquiry.

There is all the more reason why the objections which we must formulate to-day with regard to these provisions will meet with the same fate; and I have no other means than my voice in this chamber to protect my Government from all sorts of malevolent interpretations which will not fail to spring into being.

I pass to the specific question which now concerns us, that is to say, the institution of international commissions of inquiry provided for by the draft Convention for the pacific settlement of international disputes.

The Roumanian Government, which is entirely in favor of the principle of voluntary arbitration, as formulated under point 8 of the program of his Excellency Count MOURAVIEFF, the importance of which in international relations it fully appreciates, does not, however, feel bound as regards questions which clearly fall beyond the scope of this principle.

How, indeed, was this point 8 worded?

It reads as follows:

Acceptance, in principle, of the use of good offices, mediation, and *voluntary* arbitration, in cases where they are available, with the purpose of preventing armed conflicts between nations; understanding in relation to their mode of application and establishment of a uniform practice in employing them.

This is the principle, thus stated, which contains nothing with regard to *obligatory* arbitration or international commissions of inquiry of an *obligatory* character, to which my Government hastened to adhere completely and without any reservation.

Allow me to point out that, so far as the interpretation to be given to the eight points, which were unanimously adopted and which form the program of our work, is concerned, the Conference has not proceeded in an absolutely uniform manner.

There are certain matters, with regard to which the opinion prevailed that we must keep strictly within the limits laid down for our deliberations.

Thus, the American proposal relative to the inviolability of private property at sea, although closely connected with the questions that were submitted to the Conference, could not be discussed, and we had to confine ourselves to expressing the *vœu* that this important question should be laid before a future conference. And even this general *vœu*, which contained no indication of the solution to be given to the problem, presented by the American delegation, could not be adopted unanimously!

This was also the case with the proposal concerning bombardment by naval forces of ports, towns, villages, or other places situated on the sea, which are not fortified or defended. Without wishing to trespass in the slightest degree upon the necessities of naval warfare and while recognizing the special conditions of naval operations along the coast, there nevertheless existed in this assembly a strong current, an almost unanimous desire to assimilate to a certain extent, in the matter of prohibition of bombardment by naval forces, the *undefended* towns, villages, or other places situated on the seashore, to those which Article 25 of the draft Convention on the laws and customs of war guarantees against destruction by land artillery. It was objected that this question, which pertained



so closely to the fate of maritime populations, was beyond the scope of the work that had been assigned to us. For that reason the very general *vœu*, recommending the question to a future conference—a *vœu* devoid of any hint as to the solution—likewise failed to secure a unanimous vote.

On the other hand, we were much more liberal in the matter of international arbitration under point 8.

And perhaps we should ask ourselves whether in dealing with different matters, we have not applied, unintentionally, two different standards of weights and measures.

It is not, however, my intention to put what is called the previous question. The draft which is submitted to us is too important to admit of a mere technical objection in the matter of procedure. It is the substance itself that especially concerns my Government.

And if, as I am sure, it is disposed to examine in the favorable spirit which animates it as regards this draft, all proposals that are a development or even an extension of the principle formulated under point 8, it would not be just to bear it ill-will if it is unable to adhere to stipulations which it does not believe to be compatible with the rights and interests of Roumania and which, in its opinion, are not calculated to facilitate in certain cases the good relations which our country has so at heart to maintain with all other Powers.

It is evident that, if the Royal Government had been informed from the outset that the institution of international commissions of inquiry with obligatory force would be considered as coming within the scope of the eighth point, it would have made haste to formulate at once its serious objections on this special point, while declaring itself in favor of the principle of voluntary arbitration.

Such was not the case.

We had before us, in the first place, the original Russian project, which went through various successive phases before the present draft was communicated to us, barely ten days ago, as the final result of the deliberations of the committee of examination.

As soon as it was apprised of the original project, my Government immediately called attention to the serious objections to international commissions of inquiry from the Roumanian point of view.

In the original project this institution was not exactly the same in character as in the present draft. The latter, which has been known to the Royal Government only a few days, could not but still further confirm the apprehensions felt at Bucharest from the very first.

[35] And if the commissions of inquiry which figured in the original project seemed to us hardly acceptable to our country, this innovation in the form in which the present draft tends to introduce it into international law is still less so.

I pass to an analysis of the provisions of Article 9. In the first place, there is an essential difference to be noted between the mixed commissions of inquiry, which have frequently been resorted to in practice, especially between neighboring States, and the institution of international law which is now proposed to us. Roumania, for example, has on many occasions had recourse in its neighborly relations with Russia, Austria-Hungary, and Bulgaria, to such mixed commissions, whose mission it was to ascertain or clear up on the spot facts which had given rise to an incident or controversy. These commissions have often been very serviceable by furnishing the Governments concerned with the data necessary

to settle in concert differences which certain facts of a local character had provoked. From this point of view — but from this very general point of view only — our eminent reporter, Mr. DESCAMPS, was able to say that the commissions of inquiry with which Section 3 deals are not an innovation. I cannot share this opinion as regards the *obligatory* principle which the committee of examination deemed it necessary to adopt, and as regards the composition of these commissions, as provided for in Article 10. This article contains, on the contrary, a very important innovation in the matter of international law, an innovation which tends to change completely the character of the mixed commissions of which I was just speaking. In effect, the latter perform their functions only by virtue of an absolutely spontaneous agreement between the Governments directly interested in the dispute, and not by virtue of an international stipulation. Now, Article 9 expressly says: “The signatory Powers . . . agree to have recourse . . . to the institution of international commissions of inquiry.” That is a formal engagement, which a State may always invoke against another when opinions as to the expediency or necessity of such a commission are divided. Is not this *obligation*, limited, it is true, by certain clauses which we shall examine in a moment, a real innovation in this field? Certainly, and we do not consider it a happy innovation.

On the contrary, if this new principle were to be adopted for cases of local investigation, which are so frequent and which up to the present time have been left entirely to the unrestricted judgment of the Governments, it is to be feared that the practical application of this *obligatory* provision, far from facilitating the solution of the disputes in question, will, on the contrary, give rise to serious difficulties. For to be obliged to accept in certain cases an international investigation by virtue of a stipulation, instead of having, as in the past, full and complete freedom of action in this respect, may at a particular moment confront a State with serious political complications.

But before taking up the political aspect of the question — an aspect which seems to be inherent in the obligatory principle itself — I must point to another innovation, no less important than the first, concerning the composition of international mixed commissions charged with a local investigation.

If the draft which we are discussing should become public law, membership in these commissions would not, as at present, be restricted exclusively to the representatives of the States directly interested in the difference, but the door would be thrown open to the intervention of third Powers not concerned in the dispute. . . . (*Various interruptions by members of the committee of examination*: “That is a mistake!”)

Mr. BELDIMAN continues: Permit me, gentlemen, to explain.

Article 10 of the draft says that the commissions shall be constituted, unless there be a stipulation to the contrary, in the manner prescribed in Article 31 of the present Convention.

Now, this latter article deals with the constitution of the arbitral tribunal in which the representatives of third Powers clearly may sit as members or umpires. . . . (*Interruptions.*)

I hear it said that these third Powers will be chosen by the parties at variance themselves. That is true. It is no less true that by constituting commissions of inquiry in this way, their present character will be completely modified. They will cease to be a means of administrative investigation, which the Governments at issue may or may not adopt as they see fit, and will assume the authority

of an institution of international law. That is an essential point, a question of principle, of which neither the great importance in so far as the engagement to be contracted is concerned, nor the practical consequences which must necessarily flow therefrom can be disregarded. To make our idea clearer, let us compare the present situation of Roumania, which is at liberty to decide whether to have recourse to a commission of inquiry, with the situation in which we would be, if we subscribed to this stipulation.

At the present time, if as the result of some incident our Government were called upon to decide upon the expediency of such a measure — such cases occur rather frequently — it is absolutely free to do as it may judge advisable, without being bound by an international engagement. To-morrow, by virtue of Article 9 of the present Convention, another Power will be able, indeed will have the [36] right to propose to us a commission of inquiry in circumstances which may perhaps not suit us. It will therefore not suffice merely to consider the facts in the case and the political situation with which these facts are connected; the whole question will be complicated by the application to the case of an international convention which may be invoked against us, if we do not feel that we can accede to the request that is made of us. The very discussion of the question whether or not there should be recourse to a commission of inquiry, in conformity with Article 9, the inevitable divergent views as to the interpretation to be given to this stipulation, all these legal difficulties will entwine themselves around the incidents of fact and will certainly not aid in facilitating their settlement.

It is evident to us that Roumania — and the two States that share our view will be in the same plight — will find itself as a result of the new institution which it is proposed to create in a much less favorable situation, in a situation inferior to that in which it now is, when it is required to pass upon a proposal from another Government to have recourse to a commission of inquiry.

Our attention is called, however, to the clause which expressly excepts questions of fact in which the honor or vital interests of the Powers at variance are involved, as well as the clause “so far as circumstances allow,” which offer sufficient guaranties against the objectionable features which I have pointed out.

We are, I must confess, far from being so reassured on this score. In the first place, it is not well to invoke on all occasions the honor and vital interests of a country.

Numerous cases may arise that are very important to our kingdom, in which, however, it could not be said in all good conscience that honor or vital interests are directly involved, but it might be contrary to the interests of the policy of our State to accept a commission of inquiry in such cases for reasons which it might perhaps be considered inexpedient to discuss.

Why expose ourselves to the necessity of justifying a refusal as regards the application of an international stipulation? What is the need of complicating the discussion by considerations as delicate as those affecting the honor of a State or its vital interests, when every Government is to-day absolutely free to decide whether or not it should have recourse to a commission of inquiry? And then, as to the question whether in such a case honor or vital interests are more or less at stake — a question brought into being by Article 9 — is there not too much latitude left to the judgment of each individual State? And will it not frequently happen that various Powers in dispute are unevenly matched?

Such are the serious objections that we find to this clause, which, bound up as it is with the obligatory principle of Article 9, seems to us to contain germs of discord, elements of complication rather than sufficient guaranties against pretensions that might be urged against our legitimate interests.

This clause might, it is true, be given an entirely different interpretation. It might be considered as a convenient pretext for evading, if occasion demanded, the stipulation relative to these international commissions of inquiry. I have even heard it said that Article 9 does not as a matter of fact bind the nations to any great extent, that there is always a way to elude the obligatory principle which it contains by evoking the honor and vital interests clause, or by laying stress on special circumstances which would not permit the institution of a commission of inquiry. Such could not be the point of view of a Government solicitous of its dignity and anxious always to fulfill its engagements.

The Government of my august sovereign prefers frankly to oppose this part of the draft to subscribing to it with the mental reservation that it will be able subsequently, by means of specious interpretations or subterfuges, to escape the application of the principle which governs these provisions and which it would only have accepted in form.

We feel, gentlemen, that in matters of policy, especially the policy of small States, absolute good faith in international relations is a force and the best safeguard of their interests.

This is the position we are taking in stating frankly and sincerely that Roumania — in the light of the experience she has had in the past thirty years during which she has had many great difficulties to overcome before reaching her present situation — cannot consider the institution of international commissions of inquiry under the conditions laid down in this draft as a practical and useful means of settling in an amicable manner controversies of a local nature.

My task would be greatly facilitated if I could cite examples in support of the arguments which I have had the honor to present to you, examples which would bring out in greater relief the reasons for our objections.

But I do not wish to run the risk of touching upon political questions which his Excellency Count MOURAVIEFF so wisely excluded from our debates.

[37] However, as a general rule and without examining specific cases, which would nevertheless be instructive, we believe that it is impossible to legislate in the abstract on a matter which deals with the settlement of international controversies without taking into account the practical consequences which might result, from the proposed provisions, in the political relations of the States concerned.

If we could consider Article 9 solely from the standpoint of pure theory there would be nothing to say against it. Its prescriptions correspond with the laudable peaceful intentions of its authors.

Only allow me to say that we are above all an assembly of political men to whom are entrusted the interests of the States which we have the honor to represent, and as such it is our duty to take into account the exigencies of politics, just as in an entirely different matter — the Declaration of Brussels — we were obliged to take into account the necessities of war. We were all inspired by an ardent desire to mitigate as far as possible the evils of war; and the efforts of this high assembly to give concrete form to the humanitarian sentiments which animated it will remain one of the finest pages of its deliberations.

Unfortunately reality is often stronger than the best intentions. On more than one occasion the necessities of war set an insurmountable barrier in the way of the realization of the sincere hopes which we all shared.

The same is true of the sphere of international politics. To-day, with the loftiest of purposes we desire in vain to eliminate the exigencies of politics; to-morrow, inexorable reality confronts each one of us when he returns to his customary sphere of action.

It is along these lines that we deem it advisable to recall now that these stipulations regarding commissions of inquiry cannot be considered solely from the theoretical point of view of international law, but that they are required to be applied in practice to the political relations between States. Roumania, who assumed some twenty years ago her place among the independent States of Europe, has not for an instant ceased to devote all her efforts to a sincerely peaceful policy.

This policy has been put to the proof during the past twenty years, and it is not necessary in this assembly, which counts among its members so many eminent statesmen who have taken an active part in international affairs, to make known the policy which has constantly been pursued by our kingdom that is happy and proud to have been able thereby to win the approval and confidence of all the great Powers.

If the horizon beyond our frontier has at times been darkened by threatening clouds presaging a violent storm full of perils for all, our territory has never been the source of the lightning flashes.

History will appraise what Roumania has been able to contribute in her modest sphere to the maintenance of peace in a corner of Europe which has frequently given cause for anxiety. Our country at any rate will not forget the gratitude which it owes to the great Powers for the effective support which they have always given it in its development of consolidation.

It is with this in mind that Roumania now considers herself justified in submitting to you her very serious objections, founded on long experience, to an institution which does not seem to her to conform to the general spirit of peace and concord that inspires the draft Convention as a whole. In our opinion, the general arrangement of the latter would not suffer in any respect, but on the contrary would gain in value, if the articles concerning international commissions of inquiry were eliminated.

We venture to hope that the Imperial Government of Russia, in the generous spirit which pervades all the proposals that it has submitted to the Conference, will ask itself whether it is indeed necessary to attach so much importance to the preservation of this paragraph. Will it detract from the general cause of arbitration, which will be sanctioned by this Convention, if obligatory commissions of inquiry do not figure therein?

We do not think so.

It cannot be the intention of the Powers that originally collaborated on this draft to cause stipulations to be adopted by the Conference as the result of which Roumania, as well as Greece and Serbia, would consider themselves placed in a situation inferior to that in which they are at present and which they have attained at the cost of so many sacrifices.

No, gentlemen, our common cause is too noble a one to allow a discordant note to enter therein.

That is why the Royal Government has charged me to make a strong appeal to this high assembly, and especially to the representatives of the Imperial Government of Russia, so that our objections in the matter of principle, founded at the same time on a policy regarding whose eminently peaceful trend there can be no doubt, may be taken into favorable consideration. In conclusion, I beg you to pardon me if I have trespassed upon your time at greater length than usual.

But the question that is now before us is of too great importance to our [38] country to admit of brief treatment. I do not pretend to be an orator; far from it. What I especially wish to be is the faithful interpreter of the views and instructions of my Government, the devoted defender of the rights, the interests, and the future of our kingdom, and the no less devoted partisan of the good relations which so happily exist between Roumania and all other Powers, especially her neighbors.

Mr. Veljkovitch delivers the following address:

In the name of the delegation of Serbia, I have the honor to state that we join in the arguments that have just been presented by the delegate of Roumania in favor of our common motion for the elimination of paragraph 3 of the draft Convention which we have now under discussion. At the same time allow me to supplement his observations with a few considerations that, in my opinion, deserve the attention of this honorable assembly.

First of all, we desire to make it perfectly clear that in asking for the suppression of Section 3 concerning international commissions of inquiry, we do not mean to say that we are absolutely opposed to this institution in every respect. We are, on the contrary, ready to recognize that under special and exceptional circumstances international commissions of inquiry, freely consented to by the interested parties, might render important services. They can, to be specific, give an inquiry on the facts the stamp of authority which the public opinion of third States will not perhaps recognize as characterizing investigations carried on by national authorities alone, particularly if such an investigation is carried on in the midst of a public opinion over-excited by some political event connected with the matter under investigation.

But those are exceptional circumstances. They can therefore in no way warrant or justify the generalization of such proceedings.

For there is one thing which, to our mind, it is important to take into consideration, namely, that there is beneath every request for an international investigation a sort of doubt, more or less direct, concerning the impartiality of an investigation conducted by the national authorities of the other State alone. And again, a State's acceptance of the proposal to appoint an international commission of inquiry implies its consent to subject the action of its own authorities, at least as regards such and such a specific fact, to a sort of international control.

Now, this doubt as to the impartiality of the authorities of another State, this control consented to over its own authorities, this is ground on which it would seem that we should not tread except with all due prudence.

Among the susceptibilities that all States have, there are some which are indisputably legitimate and which it is most important not to ruffle under penalty of discrediting the entire institution by having recourse to it at a time when such recourse is inopportune.

However, Article 9 of the draft Convention, at least in the form which it

has now assumed, is far from offering us a guaranty against the inopportune utilization of international commissions.

The disputes which Article 9 excludes from the jurisdiction of international commissions of inquiry are disputes involving national honor or the vital interests of States.

This formula is undoubtedly an excellent one in theory. And even from the point of view of practice there is no fault to be found with it as far as the relations of large States with one another are concerned. But in the relations between great Powers on the one hand and small Powers on the other, we believe we are justified in inquiring whether in practice the great Powers will always show a disposition to recognize that small Powers have the same susceptibilities in the matter of honor and vital interests as they themselves certainly will not fail to have. Will not the small Powers be drawn at times into humiliating discussions as to whether in such and such a case their national honor is really involved, while, on the other hand, it will frequently suffice for the great Powers to invoke the argument of national honor to make it at once morally impossible for small Powers properly to bring the subject to discussion.

There is therefore in the honor clause of Article 9 a source of inequality of treatment as between the great and the small Powers, an inequality which we, being the weaker, may at times be obliged to accept in fact, but which it is absolutely impossible to sanction in law or to seal with our signatures in an international convention.

And that is not all. For even when it is averred and mutually recognized that neither national honor nor vital interests are at stake, there still remains the clause by virtue of which the Powers would have the option of having recourse to international commissions of inquiry only "*if circumstances allow.*" It is not necessary to be very deeply initiated in international political life to know that circumstances very often permit the great and powerful to do many things *merely* because they are great and powerful.

[39] The guaranty provided by the provision "so far as circumstances allow" is therefore no guaranty at all. The vagueness of this provision will most frequently give rise in practice to the possibility of large States imposing the constitution of an international commission of inquiry upon small States whenever they deem it expedient. The reverse, however, can never take place.

Now, an institution — were it the best in the world — which would operate only at the pleasure of one of the contracting parties can never be regarded as in harmony with the exigencies of the other contractant's honor and dignity.

Under these conditions, the nature of the institution of international commissions would be changed. The public opinion of the small States would no longer regard them as exclusively a means for the impartial ascertainment of the real facts, with a view to facilitating the work of justice; but as an outward sign of inferiority and dependence and, as such, public opinion in the small States would never accept such commissions.

If we were to adopt them, it seems to me that we could hardly boast that we had contributed to the progress of international law. An institution which would only fortify the strong in a situation that is already strong as against the small and weak would be directly opposed not only to the tendency of international law, but also to every idea of justice and equity in general.

If international commissions of inquiry could be organized in such a way

as to make an engagement equally and seriously applicable to all the contractants, I think, gentlemen, it would then be possible for us to come to an agreement. But when the committee of examination, composed of so many eminent men, the most competent in this field, has not succeeded, after long and profound study, in submitting to us a draft free from faults as serious as those which I have just pointed out seem to me to be, I conclude that the matter is not yet ripe enough to enter into conventional international law. We have already in the course of our labors encountered similar difficulties, which we let alone, leaving the whole question in the domain of unwritten international law, with an expression of hope that with the development of the sentiment of international solidarity and the aid of progressive customs, crying abuses would not result therefrom in practice. Such was the action which we then deemed we ought to take; it is also the solution to which it seems to me inevitable that we should now have recourse.

These, gentlemen, are the reasons why — without attacking the institution itself — we thought it necessary to ask for the omission of Section 3 of the draft relating to the international commissions of inquiry.

Mr. **Delyanni**, delegate of Greece, speaks as follows:

After an exposition so clear and so illuminating as that of my colleague of Roumania of the motion which he had the honor to present to the commission on the third chapter of the draft Convention for the pacific settlement of international disputes, and the very detailed remarks with which the delegate of Serbia has supplemented it, there is nothing left for me to add in support of the reasons which have led them to submit this proposal to you, and I shall confine myself to commending it likewise, trusting that the commission will examine it in the hope of reaching an agreement, as is desired by all, especially at the end of our labors.

Dr. **Stancioff** desires to say a few words in reply to the arguments of the preceding speakers. Mr. **Beldiman** has said that we should not contract engagements with the intention in mind of not observing them. No more than he does Mr. **Stancioff** desire to hide behind formulas which he has accepted because they would not bind him in any way. But such is not the situation here.

The institution of international commissions of inquiry, with the organization which the draft insures to such commissions, leaves the States every guaranty of independence that they can wish for. Mr. **Stancioff** quotes the clause which provides for the operation of the commission "*so far as circumstances allow.*" He recalls likewise the stipulation to the effect that "the interested parties agree to have recourse, etc."

These provisions would seem to leave the States free to judge and act as they see fit, and guarantee that the dispute will be settled between the interested parties and without the intervention of parties not concerned in the controversy.

Mr. **Stancioff** dwells upon the composition of the commissions, as provided for in Article 31. The two countries in dispute will have freely chosen representatives on the commission, with a third member acting as an impartial president. That is still another important guaranty.

Mr. **Beldiman** has recalled that international mixed commissions already exist, and he has shown the differences which there seem to him to be between these commissions and the organ created by the present draft. Mr. **Stancioff** thinks that there is the same difference between these two institutions as between custom and the *written law*, and he says that we can only congratulate ourselves



when the progress of ideas causes the former to be superseded by the latter.

[40] Passing to Article 13, Mr. STANCIOFF shows how this provision gives the States freedom of action in so far as the operation of commissions of inquiry is concerned. He recalls that the report of the commission of inquiry has not the binding character of an arbitral award. This report states the facts and thus makes it possible to gain time and calm the public mind; it is a powerful aid in quieting down and settling the dispute.

In conclusion, Mr. STANCIOFF says that he does not share the apprehensions which have been expressed on the score of the danger to which the international commissions of inquiry will expose the little States. He would merely ask that the text of Article 9 be slightly modified so as to emphasize the fact that commissions of inquiry are really of a voluntary nature, as Article 9 at bottom provides, although its terms are not absolutely explicit on that subject.

He would request further that Article 13 be amended in such a way as to make it perfectly clear that the States at variance have the right, if it seems to them advisable, to consider the commission's report as not having been made.

Mr. STANCIOFF's amendment would read as follows:

#### ARTICLE 13

It leaves to the Powers in controversy entire freedom either to conclude a friendly settlement based upon this report, or to consider the report as never having been made.

Mr. Rolin, delegate of Siam, makes the following declaration:

The delegates of Siam have received express instructions not to neglect any opportunity to make known the desire which animates His Majesty the King of Siam to respond to the noble initiative of His Majesty the Emperor of Russia by aiding in bringing about an agreement among the Powers represented at The Hague. The views of the Siamese Government are particularly favorable to the conclusion of a Convention for the *peaceful settlement of international disputes*, and Articles 9-13 of the draft, relative to *international commissions of inquiry*, will receive a favorable vote from us.

We shall be particularly glad to cast this vote and we eagerly hope that these articles will be adopted, for it is our conviction that it is essentially in the interest of the Siamese Government to make known and to ascertain the truth in all cases which concern it. There is, moreover, no doubt that an exact and complete knowledge of the facts would be calculated to facilitate the peaceful settlement of disputes by preventing Governments from falling into error and public opinion from being led astray.

Furthermore, we consider that a difference between States will very rarely have to do with a question of fact and that the ascertaining of the facts will as a general thing be nothing more than a natural and necessary prelude to a legal argument. We therefore believe that arbitration must necessarily follow upon the investigation, in default of an immediate agreement. It is with this conviction that we declare that the Siamese Government will undoubtedly be led to consider the agreement looking to possible arbitration, or in other words the *previous conclusion of a compromis*, as the principal condition on which it will be able to consent to an investigation of disputed facts on its territory by an international commission of inquiry.

We request that official note be made of this declaration.

Mr. ROLIN is informed that his declaration will be officially recorded.

Chevalier Descamps says that it is his duty to defend the conclusions which were unanimously adopted by the committee of examination, and that he is ready to set them forth in the greatest detail if that should be necessary. All the delegates have come here animated by a twofold sentiment — a sincere devotion to the cause of peace and the *rapprochement* of nations, and a steadfast attachment to their own countries. It is evident that every one has the right and the duty to examine the question from the point of view of the State which he represents. It is clear also that the institution may not be regarded by everybody in the same light. It is perfectly legitimate that the little States should consider it from their special point of view. Nevertheless, Mr. DESCAMPS believes that it will be possible to satisfy all in large measure without eliminating a series of provisions to which the committee of examination has given its approval.

What the committee did along these lines was done unanimously. No one dreamt of denying the beneficial character of commissions of inquiry. However, as regards the character to be given them, there have come to light certain divergent opinions.

Before taking up this point, the reporter deems it necessary to settle a question brought up by Mr. BELDIMAN, a question for which, in his opinion, there is no good ground. The delegate of Roumania contests the competence of the commission, basing his argument on an interpretation of point 8 of the Russian circular of December 30, 1899. If this interpretation were adopted, we should reach inadmissible conclusions. There would seem to be two decisive reasons against this interpretation. We must look at the circular of his Excellency Count MOURAVIEFF as a whole. What he proposes are themes expressed in general outline, not an invariable solution. Moreover, we must likewise take into account his Excellency Mr. DE BEAUFORT's circular, which submits to the examination of the Conference "all other questions connected" with the program laid out [41] by his Excellency Count MOURAVIEFF's circular. Under these conditions, it is impossible to question the competence of the high assembly. If the opposite solution were adopted, instead of marching forward, we should go backward, since there exist treaties which provide for cases of obligatory arbitration.

There would seem to be no doubt on this point. Furthermore, we cannot disregard the intentions of the Imperial Russian Government, which itself enumerated cases of obligatory arbitration in the first project that it submitted to the Conference.

Mr. BELDIMAN has said that the draft would gain through the omission of Section 3. The reporter is of the opposite opinion. The committee has endeavored to adopt a body of provisions which hold together, which bear upon the general maintenance of peace, and which in case of a serious dispute provide for mediation and good offices. In addition — for cases in which questions of law or questions of fact give rise to differences between States — arbitration has been provided on the one hand and international commissions of inquiry on the other. The mission of international commissions of inquiry is simply to elucidate points of fact. If this mission led to other consequences, it would be running counter to the purpose in mind.

Mr. BELDIMAN has said that the original reading — that of the Russian project — was more acceptable. We shall point out to him that the new reading has been formulated for the purpose of eliminating the obligatory character of the

original provisions. This interpretation was accepted by all the members of the committee of examination.

The reporter remarks that the text of the draft submitted for consideration contemplates the Powers interested in the dispute to the exclusion of intervention by other Powers. The intentions of the committee of examination and the evident meaning of the article meet Mr. BELDIMAN's desires.

The honorable delegate of Roumania has said that the commissions constitute an innovation. We must understand each other. Mixed commissions have long been in existence and operation. We are striving to improve them. Nevertheless the former mixed commissions and the present institution are two organizations of the same kind.

Without wishing to dwell upon all the points referred to by Mr. BELDIMAN, the reporter thinks that the Commission should refrain from views of too absolute a character. One thing has struck him in the various objections raised, and that is that they are objections to the institution itself, which Mr. BELDIMAN has sweepingly condemned without endeavoring to see whether it is possible to discover guaranties to perfect it. The reporter asks that the guaranties that may be found necessary be indicated. The radical suppression of Section 3 would leave a serious gap, and the work as a whole would be injured.

The reporter expresses the opinion that by keeping at the question the objections can be taken into account, and it is along these lines that the Commission should seek to reach an agreement by formulating guaranties, particularly as regards the small States.

Mr. Martens delivers the following address :

Gentlemen, before presenting certain explanations regarding the draft, which was unanimously adopted yesterday by the committee of examination, I take the liberty of again craving your indulgence. Without going exhaustively into the question of competence, on which the reporter has already spoken, I should like nevertheless to add certain considerations.

On referring to Count MOURAVIEFF's circular, I am absolutely convinced that the institution of international commissions of inquiry was included under point 8 and that it was an integral part of the program submitted to the Powers represented in this high assembly.

International commissions of inquiry do not, in the opinion of the Imperial Government, belong to the class of questions "connected with the program." This matter comes absolutely within the scope of the program itself. There is not the slightest doubt on this score. In submitting to the Conference on May 26 a project of which this institution formed a part, the Imperial Government was holding to its program; it was not enlarging its scope, and it did not consider that it was presenting questions foreign to its purpose.

Permit me, gentlemen, to add a few more considerations on international commissions of inquiry, which are the subject of our present discussion. What is their object? It has been said that they pertain to politics; it has been said that they belong to the domain of theory. But I am in a position to state most positively that the articles concerning commissions of inquiry have no political aim and do not meddle with the policies of any State, be it a great or a small Power, be it in the east or in the west.

Politics, as we well know, are excluded from our debates; they do not appear

on our order of business. The circulars of Count MOURAVIEFF and of Mr. DE BEAUFORT vouch for this.

The object of commissions of inquiry is the same as that of arbitration, good offices, and mediation, namely, to point out all the means of allaying disputes arising among nations and to prevent war. This is their only object and they have no other. The commissions provide the means for this by an impartial examination [42] of the circumstances and of the facts. It is not necessary to cite cases in which these commissions of inquiry can render great service to the peace of the world, but let us take one case. Suppose the authorities on a frontier arrest somebody on foreign territory. A most serious dispute may arise as the result of such an arrest—the more obscure the circumstances remain, the more is popular feeling inflamed. Newspaper articles, interpellations in parliament, may force the hands of the Governments and involve them in conduct that is the very opposite of their intentions. One may compare these commissions of inquiry to a safety valve put into the hands of Governments. They are able to say to over-excited and ill-informed public opinion, "Wait! We shall organize a commission which will go to the spot and secure all the necessary information; in a word, it will throw light on the matter." In that way time is gained, and in international life a day gained may save the future of a nation. The object of commissions of inquiry is therefore clear. They are the instruments of pacification. A misunderstanding seems to exist in regard to their operation, but one should not forget that the litigating Powers are always free to accept them or to refuse their services.

Gentlemen, I fully share the opinion that the floor of a diplomatic conference is not a tribune from which to make great speeches. Our Conference has been called an International Parliament; but whatever name is given to the Conference, all the delegates know that this high assembly is not concerned with the politics of the day, nor with the international treaties which regulate the present relations among States.

It is our common purpose to give a more solid basis to peace, to concord, and to friendship among nations.

Such, gentlemen, is the object indicated by my august sovereign and accepted by you all. It is certain that, especially at the beginning of our work in this Conference, the diversity of opinions and ideas was great among us, but in the course of our common labors we have come to know one another better, to understand one another, and to have greater mutual esteem and the growing conviction that we are working, not for a political, but for a humanitarian purpose, not for the past nor for the present, but for the future. That is why the relations among us, the members of this Conference, have become day by day more cordial, our handclaps warmer. The feeling that we are all following a common path has filled us with the desire to succeed in presenting to our Governments a good, great, and noble work, from which all questions of sovereignty and politics should be formally excluded.

Gentlemen, if in private life that man is happy who looks on the bright side of things, in international life that man is great who sees things whole. We must not remain in the valley if we wish to broaden our horizon.

We must do all we can to understand one another, for with mutual understanding comes mutual esteem. Consider for a moment the example offered us by this small and charming country whose guests we are.

Why has little Holland played so great a part in history? Why have her commerce and her ships spread over all the oceans? It is because the Dutch have not remained behind their dunes; they have climbed to the top of those dunes and breathed in the air of the sea. They perceived a vast horizon and they followed the paths stretched out before them, which have put them in direct communication with all the nations of the globe.

That is the explanation of the cosmopolitan spirit which has at all times distinguished the artists, the writers, and the statesmen of this little country. But, gentlemen, Holland has done far more. In her fight against the invasion of the sea she has constructed locks by means of which her land waters and the tides of the sea have been joined and mingled, just as the ideas, the institutions, and the customs of the Dutch nation have, thanks to its international relations, been developed, clarified, and, so to speak, crystallized. Might it not be said, to continue the simile, that when they look out upon the common horizon of humanity national ideas broaden and become harmonized? To reach the results attained by Holland, let us follow that country's example: let us climb to the top of our dunes and direct our gaze upon a broader horizon. Let us open up the locks and show that we did not build them for selfish ends nor with any thought of exclusiveness in mind.

The barriers of prejudice must fall, and then we shall see a spirit of understanding and of mutual confidence in dealing with all questions.

Concord, gentlemen, should be the watchword and the aim of our labors.

Mr. **Beldiman** replies that Mr. **MARTENS** has held up the example of Holland to the nations represented at the Conference. Roumania would indeed be happy if she could look back upon a past of several centuries of civilization, of struggle, and of progress. Unfortunately scarcely thirty years have elapsed since she began her career as a modern nation. This is a situation of inferiority which it would be unjust to dwell upon, and Mr. **BELDIMAN** would have preferred that the example in question had not been pointed to.

[43] The **President** says that if he had considered it possible that the preceding speaker had any such intention in mind, he would not have allowed it to pass. Nothing in Mr. **MARTENS'** address could have referred to the particular situation of the country which Mr. **BELDIMAN** represents. Mr. **MARTENS** merely wished to make an appeal to all the members of the assembly, inviting them to rise above their own frontiers and to contemplate only the frontiers of humanity. (*Applause.*)

Mr. **Beldiman** reverts to the arguments against his contentions. In saying that international commissions of inquiry might bring into the case Powers foreign to the dispute, he had nothing else in mind than the composition of these commissions as laid down in Article 31. It is provided that an international commission of inquiry operating in a certain territory with the object of settling a dispute between two States might call upon States other than those actually concerned to intervene. Mr. **BELDIMAN** did not say that the Powers would intervene in the constitution of the commission; he spoke only of the composition of the commission, and he wanted to prove the absolutely essential difference in principle which should exist between the composition of an arbitration tribunal, which passes as a sovereign upon the law, and that of a commission of inquiry, which seeks to ascertain on the spot a question of fact.

It has been said that the original Russian project provided for a similar organization, to which no objection was raised. Mr. BELDIMAN recalls that this project was not subjected to any general discussion. A small committee immediately took charge of it for study and the first delegates had no means of taking part in that study or of communicating the views of their Governments. Furthermore, it is to be noted that in the various phases through which this examination passed, the representatives of the press seem to have enjoyed a genuine privilege in the matter of information.

The **President** interrupts Mr. BELDIMAN with the request that he do not bring a personal matter into a debate in which there is need of good-will and union on the part of all.

Mr. Beldiman replies that he must nevertheless persist in stating that up to the present moment no opportunity has been afforded him to express his views before the committee or elsewhere; there should be no surprise therefore that he now presents his objections to a draft which came to his knowledge only a few days ago.

Returning to the Russian project, Mr. BELDIMAN points out the important difference between the organization provided for in that project and the organization which is proposed by the committee of examination. Article 16 of the Russian project contemplates the case of a *serious disagreement* or a dispute, that is to say, a situation which may lead to war. The present draft does not confine itself to such a case. Mr. BELDIMAN feels that he must once more point out this important difference.

The **President** says that the general discussion of the draft on first reading is closed. He asks Mr. BELDIMAN whether he desires a vote, before the Commission passes to a discussion of the articles, on the suppression pure and simple of Section 3 relative to international commissions of inquiry.

On Mr. BELDIMAN's objecting to the Commission's passing to a vote after the first reading, which is contrary to the procedure followed up to the present time, the **PRESIDENT** declares the discussion on Articles 9 to 13 open.

Article 9 is read:

In disputes of an international nature arising from a difference of opinion regarding facts which may form the object of local determination, and besides involving neither the honor nor vital interests of the interested Powers, these Powers, in case they cannot come to an agreement by the ordinary means of diplomacy, agree to have recourse, so far as circumstances allow, to the institution of international commissions of inquiry, in order to elucidate on the spot, by means of an impartial and conscientious investigation, all the facts.

This article is adopted subject to second reading.

Article 10 is read:

The international commissions of inquiry are constituted, unless otherwise stipulated, in the manner determined by Article 31 of the present Convention.

The **President** says that he has received from his Excellency Mr. EYSCHEN an amendment to this article reading as follows:

Where there are special provisions, the procedure for inquiry shall be determined by the principles contained in the rules in Articles 29 *bis et seq.* relating to arbitration procedure, so far as these principles are applicable to the institution of international commissions of inquiry.

[44] His Excellency Mr. **Eyschen** says that he desires to call attention to an omission in Article 10. This article tells how the commissions of inquiry shall be constituted, but does not contain the rules which shall govern their operation.

It is often not an easy thing to pursue the quest of truth, to distinguish the pertinent and relevant facts, and to state the results adequately from a legal point of view. Furthermore the rights of the parties concerned must be guaranteed against prejudice, artifice, and personal feelings. There are rules that it is essential to observe, which will insure the sincerity and efficacy of this means of investigation. Jurists are accustomed to observe these rules; but international investigations will frequently be entrusted to technical men who are not jurists, who will perform their duties in remote countries, who must act quickly in order to get at the truth before all traces of it are lost, and who consequently will not be able to inform themselves as to the legal difficulties. Rules of procedure for international inquiries would therefore be still more necessary in this case than in the matter of arbitration, for which rules are laid down in Articles 29 *et seq.* It is too late to draw up such rules.

Perhaps we might confine ourselves to referring to the general principles underlying arbitration procedure, in so far as those principles are applicable to commissions of inquiry. Mr. **EYSCHEN** cites as examples among other provisions those prescribing that the *compromis* must state clearly the matter in dispute and the powers of the arbitrators, that the tribunal shall determine its competence and rules of procedure, that the documents produced must be communicated to all the parties involved.

Chevalier **Descamps** says that the amendment presented by his Excellency Mr. **EYSCHEN** belongs to the class of guaranties which were referred to at the beginning of the meeting and which might be applied to advantage to the organization of international commissions of inquiry. Chevalier **DESCAMPS** thinks that it would be well to adopt Mr. **EYSCHEN**'s proposal, subject to formulation of its text and taking into account the maxim *mutatis mutandis*.

The **President** says that this amendment will be referred to the committee of examination.

Dr. **Zorn** desires to be assured that this reference does not imply the adoption of the principle, to which, so far as he is concerned, he cannot agree.

Mr. **Holls** says that it is very important not to have any confusion between the operation of arbitration and the operation of commissions of inquiry, which latter is merely of an auxiliary character. Mr. **HOLLS** would be unable at present to accept the principle of the amendment, and he also desires to have it noted that the Commission has not adopted it.

Mr. **Lammasch** explains the essential difference between the object of commissions of inquiry and that of arbitration. The purpose of the former is to investigate a local dispute; the latter, on the contrary, is required to take cognizance of points of law and of fact. The operation of the commissions is therefore much simpler than that of arbitration, and though the two institutions may have some provisions in common, we must not be misled into supposing that they can be made to coincide absolutely.

Mr. **Martens** states that he concurs in Mr. **LAMMASCH**'s opinion.

The **President** explains that this is simply a reference to the committee, the question being left absolutely open, with no implication as to the adoption of the principle of the amendment.

His Excellency Mr. **Eyschen** replies that his sentiments were similar to those of the preceding speakers. That is why his amendment does not refer to specific articles, but to their underlying principles, and then only in so far as these principles are applicable to commissions of inquiry. Investigations by the latter are at bottom real cases like those submitted to arbitrators, but they are concerned only with questions of fact. There is a dispute, a controversy. If such investigations are carried on before arbitrators, they will be governed by Articles 29 *et seq.*, so far as applicable. We must confine ourselves to setting forth in Article 10 the rules essential to every investigation.

The **President** says that it is understood that the committee of examination will study the question and that he will be glad to have Mr. **Eyschen** collaborate in this study.

With this reservation, Article 10 is adopted.

Article 11 is read:

The interested Powers undertake to supply the international commission of inquiry, as fully as they may think possible, with all means and facilities necessary to enable it to become completely acquainted with and to accurately understand the facts in question.

This article is adopted.

Article 12 is read:

The international commission of inquiry communicates its report to the Powers in dispute, signed by all the members of the commission.

This article is adopted.

Article 13 is read:

[45] The report of the international commission of inquiry has in no way the character of an arbitral award. It leaves to the Powers in dispute the option either of concluding a friendly arrangement on the basis of this report or of having recourse subsequently to mediation or arbitration.

Mr. **Stancioff** recalls that he proposed at the beginning of the meeting an amendment to this article, which might be worded as follows:

It leaves to the Powers in controversy entire freedom either to conclude a friendly settlement based upon this report, or to consider the report as never having been made.

The **President** says that this amendment will be referred to the committee of examination and declares Article 13 adopted with this reservation.

His Excellency **Turkhan Pasha** says that he must reiterate, on the first reading of Section 3, the express reservations which he formulated on the first reading of Section 4.

His Excellency **TURKHAN PASHA** is informed that his reservations will be put on record.

The **President** says that the Commission has now completed the first reading of the draft as a whole. Before passing to the second reading, the committee of examination will study, in conjunction with their authors, the amendments which have been presented at to-day's meeting. He continues:

All of the objections which have inspired the delegates of Roumania, Serbia, and Greece have repeatedly occurred to most of the members of the committee. If they had believed that the proposals which were adopted contained anything



whatever in impairment of the sovereignty or the dignity of any Power, great or small, these proposals would not have received the vote of a single member. It does not seem to me that there can be any real objection on the merits, but it is possible that the form may well be capable of improvement. We are ready to make every effort to come to an agreement with our dissenting colleagues. Appealing to the sentiment which has often animated us in the course of our deliberations,—namely, the wish for unanimity in our decisions,—I say to Mr. BELDIMAN and to the delegates of Serbia and of Greece: “Come to the committee of examination, and together we shall weigh in the balance the objections which have been raised to this proposal. We shall endeavor to satisfy you, and, after this interchange of opposing views, we shall be able to say that we have done everything that can be done to obtain unanimity.”

Mr. **Beldiman** says that he gladly accepts the **PRESIDENT**'s invitation, but he repeats that his instructions are formal and that his acceptance does not bind his Government.

The **President** says that the next meeting will take place on Thursday, July 20, at 2 o'clock.

The meeting adjourns.

## SEVENTH MEETING

JULY 20, 1899

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Mr. **Léon Bourgeois** presiding.

The **President** observes that proofs of the minutes of the last meeting will be distributed among the members who took part therein. These members will kindly inform the secretariat of any changes that they desire made.

The order of business calls for the second reading of the arbitration draft. The discussion on commissions of inquiry, however, will be reserved for the next meeting, some members not yet having received instructions on the subject.

Chevalier **Descamps**, reporter, says that the committee has examined a number of the points upon which observations have been made. He will indicate them as the articles are submitted for discussion.

The **President** reads Article 1 :

With a view to obviating, as far as possible, recourse to force in the relations between States, the signatory Powers agree to use their best efforts to ensure the pacific settlement of international differences.

Chevalier **Descamps**, reporter, makes certain explanations with regard to two slight changes which the committee has made in this article.

[46] Mr. **Beldiman** remarks that on the first reading it was said that this article might be considered as a general declaration which would serve as a preamble to the Convention. He inquires why it has been preserved as a special article.

He adds that, in his opinion, the word *agree* has a different meaning in the following articles from what it has here.

Chevalier **Descamps**, reporter, replies that it is plain that the article in question does not imply a formal engagement between one State and another.

It contains merely a general promise to use one's best efforts, and not a special engagement.

Mr. **Beldiman** desires to have this explanation inserted in the report.

The **President** concurs in the explanation made by the reporter and states that this will be done.

The article is adopted.

The **President** reads Article 2, which is adopted with the modification proposed by Mr. **VELJKOVITCH**. The word *agree* will be substituted for *have decided*, since, in the opinion of the delegate of Serbia, the former expression has a more contractual meaning.

The article is adopted in the following form :

In case of serious disagreement or dispute, the signatory Powers agree, before an appeal to arms, to have recourse, as far as circumstances will allow, to the good offices or mediation of one or more friendly Powers.

The Commission passes to Article 3.

Mr. **Veljkovitch** would like to have Article 3, in which mention is made of *offered mediation*, made to accord with Article 2, which treats of *requested mediation*. It should likewise be stated that it must be a question of a serious dispute. He therefore proposes that the expression "*between whom there has arisen a serious dispute that may lead to a rupture of peaceful relations*" be substituted for the words "*at variance*" appearing in the first paragraph.

Chevalier **Descamps** is of the opinion that the two articles are in accord. In his opinion, there is no possible doubt but that Article 3 likewise applies only to cases of *serious disagreement that might lead to war*.

The new wording, however, has the defect of rendering the phraseology more uncertain. The question might be examined by the committee of examination.

The **President** shares this view.

Mr. **Veljkovitch** says that since the explanations which have been made accord with his view, he would be satisfied if the explanations are inserted in the minutes as being the Commission's official interpretation.

It is decided that this shall be done.

Mr. **Lammasch** presents an additional argument in favor of this interpretation: the fact that in paragraph 2 mention is made of the course of hostilities proves that it is indeed a case of serious disagreement or of a dispute that might lead to the rupture of peaceful relations that the Commission had in mind.

Mr. **Veljkovitch** observes that it is stated in paragraph 3 that the exercise of the right to offer good offices may never be considered by either of the parties at variance as an unfriendly act. It would likewise be proper to provide for the case in which the Power to whom good offices have been tendered is not in a position to accept them, and he proposes that it be decided that the refusal in question likewise may not be regarded as an unfriendly act.

Mr. **Asser** observes that this question was examined by the committee of examination, who were of the opinion that it was not desirable to insert a clause of this kind in a convention whose aim was to encourage all measures which might bring about peace. Mr. **VELJKOVITCH**'s proposal would tend to thwart this purpose; it would be almost an invitation to refuse mediation. It goes without saying that a refusal may never be regarded as an unfriendly act.

The **President** and the **Reporter** observe that Article 6 does, as a matter of fact, meet Mr. **VELJKOVITCH**'s wishes, for it covers the case of an offer as well as that of a request.

His Excellency Count **Nigra**, as author of paragraph 3 of this article, desires to state that he never for an instant considered that an offer of this kind might not be of a friendly nature.

Dr. **Zorn** states that what Mr. **VELJKOVITCH** has said is perfectly evident. Our work here is in the interest of the general peace, and that being so, it is not fitting to speak of a refusal, which is an act that may bring about war.

Mr. **Veljkovitch** does not see why the refusal of an inopportune offer of good offices should be regarded as an act of greater danger to the maintenance of peaceful relations between the States than the inopportune offer itself. Quite the contrary, it is the offer that may cause friction and envenom the relations between

the States, while the refusal is nothing more than a legitimate act of self-defense against outside interference.

[47] Mr. **Lammach** remarks that Article 5 provides for the case of an interruption of mediation; it is therefore evident *a fortiori* that mediation may be declined at the outset.

Mr. **Beldiman** is of the opinion that the Commission might confine itself to mentioning this interpretation in the minutes.

The **President** states that the refusal of the offer may not be regarded as an unfriendly act.

There is no doubt on this score.

Articles 5 and 6 would seem to give sufficient satisfaction in this respect.

But the committee does not wish to appear as encouraging refusal by adopting an express provision, as desired by the delegate of Serbia.

Mr. **Veljkovitch** would be satisfied with this interpretation, provided it be adopted by the Commission and inserted in the minutes as the official interpretation.

It is decided that this shall be done.

Article 3 is adopted without change as follows:

Independently of this recourse, the signatory Powers deem it expedient that one or more Powers, strangers to the dispute, should, on their own initiative, and as far as circumstances may allow, offer their good offices or mediation to the States at variance.

Powers strangers to the dispute have the right to offer good offices or mediation, even during the course of hostilities.

The exercise of this right can never be regarded by either of the parties in dispute as an unfriendly act.

Article 4 is adopted without change in the following form:

The part of the mediator consists in reconciling the opposing claims and appeasing the feelings of resentment which may have arisen between the States at variance.

Article 5 is adopted with a slight modification made by the committee of examination, in order to include in it every means of conciliation. It will read as follows:

The functions of the mediator are at an end when once it is declared, either by one of the parties to the dispute, or by the mediator himself, that the means of reconciliation proposed by him are not accepted.

Articles 6, 7, and 8 are adopted without change in the following form:

#### ARTICLE 6

Good offices and mediation, undertaken either at the request of the parties in dispute, or on the initiative of Powers strangers to the dispute, have exclusively the character of advice and never have binding force.

#### ARTICLE 7

The acceptance of mediation cannot, unless there be an agreement to the contrary, have the effect of interrupting, delaying, or hindering mobilization or other measures of preparation for war.

If it takes place after the commencement of hostilities, the military operations in progress are not interrupted, unless there be an agreement to the contrary.

## ARTICLE 8

The signatory Powers are agreed in recommending the application, when circumstances allow, of special mediation in the following form:

In case of a serious difference endangering the peace, the States at variance choose respectively a Power, to which they entrust the mission of entering into direct communication with the Power chosen on the other side, with the object of preventing the rupture of pacific relations.

For the period of this mandate, the term of which, unless otherwise stipulated, cannot exceed thirty days, the States in dispute cease from all direct communication on the subject of the dispute, which is regarded as referred exclusively to the mediating Powers, which must use their best efforts to settle it.

In case of a definite rupture of pacific relations, these Powers are charged with the joint task of taking advantage of any opportunity to restore peace.

**Mr. Miyatovitch** reads the following declaration, in the name of the Royal Government of Serbia:

In the name of the Royal Government of Serbia, we have the honor to declare that the adoption by us of the principle of good offices and mediation does [48] not imply recognition of the right of third States to use these means except with the extreme caution required by the delicate nature of such measures.

We shall admit good offices and mediation only on condition that they preserve fully and wholly their character of purely friendly counsel, and we can never accept them in such form and circumstances as might brand them with the stamp of intervention.

The delegate of Serbia is informed that official note is made of his declaration.

His Excellency **Noury Bey** states that, not having received instructions, the Turkish delegation abstains from voting on paragraph 1.

The Commission passes to Section 4.

Article 14 is adopted without change in the following form:

International arbitration has for its object the settlement of disputes between States by judges of their own choice and on the basis of respect for law.

As regards Article 15, **Mr. Pompilj** says that the words "questions of law" (*questions de droit*) might be ambiguous. It is as if we admitted that there are wars arising from other causes than the claiming or defense of a right (*droit*). He proposes that the expression "questions of a legal nature" (*questions d'ordre juridique*) be substituted.

This amendment is adopted.

The article will therefore read as follows:

In questions of a legal nature, and especially in the interpretation or application of international conventions, arbitration is recognized by the signatory Powers as the most effective and at the same time the most equitable means of settling disputes which diplomacy has failed to settle.

**Mr. Beldiman** has been charged by his Government to make the following declaration:

The Royal Government of Roumania, which is entirely in favor of optional arbitration, the great importance of which in international relations it fully appreciates, does not understand that by Article 15 it is agreeing to accept arbitration

in all cases therein provided for, and it feels that it must formulate express reservations in this respect.

It can therefore vote for this article only with this reservation.

The delegate of Roumania is informed that official note is made of his declaration.

With regard to Article 16, Mr. **Beldiman** observes that his Government can adhere to it only if it is understood that it does not relate to disputes which have arisen before the adoption of the project. He reads the following declaration:

The Royal Government of Roumania declares that it can adhere to Article 16 only with the express reservation, to appear in the minutes, that it is resolved not to accept in any event international arbitration for the settlement of disputes or disagreements which have arisen previous to the conclusion of the present convention.

The delegate of Roumania is informed that official note is made of this declaration.

Mr. **Veljkovitch** understands Article 16 as being, not an engagement, but simply an option, of which the respective Governments are absolutely free to avail themselves or not. Consequently they may, if they are able to come to an agreement, make conventions with regard to controversies which have already arisen, but they are not obliged to do so.

Mr. **Rolin** desires to state that this declaration can in no way bind the other Powers.

Mr. **Stancioff** observes that Article 16 speaks of the arbitration convention, without having given a preliminary explanation of that convention. He would like to inquire whether we are to understand by the expression "arbitration convention" the agreement by means of which existing differences are to be settled by arbitration, and whether that convention will contain the principles which will guide the arbitrators in their consideration and decision of the difference.

Article 16 is adopted in the following form:

The arbitration convention is concluded for questions already existing or for questions which may arise eventually.

It may embrace any dispute or only disputes of a certain category.

With regard to Article 17, Mr. **Stancioff** says that Articles 17 and 30 speak of the agreement to comply with the arbitral award.

Is it not advisable to state whether there is a case in which the parties are released from their engagement, and should not the contents of Article 26 be quoted here? (Paragraph 1: The arbitral award is void in case of a void *compromis* or exceeding of power or of corruption proved against one of the arbitrators.— Old draft of arbitration code.)

[49] Articles 17 and 18 are likewise adopted in the following form:

#### ARTICLE 17

The arbitration convention implies an engagement to submit in good faith to the arbitral award.

#### ARTICLE 18

Independently of general or private treaties expressly stipulating recourse to arbitration as obligatory on the signatory Powers, these Powers reserve to themselves the right of concluding, either before the ratification of the present act or later, new agreements,

general or private, with a view to extending obligatory arbitration to all cases which they may consider it possible to submit to it.

Mr. **Beldiman** can adhere to Article 18 only with the reservation set forth in the following declaration: "The Royal Government of Roumania declares that in adhering to Article 18 of the Convention, it does not understand that it is making any agreement with regard to obligatory arbitration."

(Article 19 has been replaced by Article 29 *bis*.)

With regard to Article 20, Dr. **Zorn** states that the German Government objected to the word "Court" of Arbitration. As he had the reasons for this objection inserted in the minutes of the committee of examination, he considers it useless to repeat them here. He merely desires to state that this objection is based upon the following consideration: that it is here a question of a "list" of judges rather than of a court in the proper sense of the term.

Article 20 is adopted in the following form:

With the object of facilitating an immediate recourse to arbitration for international differences which it has not been possible to settle by diplomacy, the signatory Powers undertake to organize a Permanent Court of Arbitration, accessible at all times and operating, unless otherwise stipulated by the parties, in accordance with the rules of procedure inserted in the present Convention. -

With regard to Article 21, Chevalier **Descamps** says that Count DE MACEDO has requested that the hope be expressed therein that the States will show their preference for the Permanent Court of Arbitration rather than for special arbitration tribunals.

The committee, while fully approving this suggestion, considered it inadvisable to insert it. The expression of this hope would seem to be an exertion of too much pressure on the Powers to induce them to have recourse to a newly established tribunal. Chevalier **DESCAMPS** believes that the mention of these considerations would meet the wishes of Count DE MACEDO.

The **REPORTER** further remarks that Mr. **ASSER** has proposed a similar amendment, in which Count DE MACEDO concurs.

He repeats, however, that the advantages presented by this amendment do not counterbalance the drawbacks to which it would give rise.

Mr. **Asser** does not insist upon his proposal.

Count **de Macedo** states that he understands and respects the reporter's apprehensions, although he does not entirely share them.

Article 21 is adopted in the following form:

The Permanent Court shall be competent for all arbitration cases, unless the parties agree to institute a special tribunal.

In Article 22 the words "delivered with respect to them" (*rendue à leur égard*) are replaced by "concerning them delivered" (*les concernant et rendue*) and the article is adopted in the following form:

An International Bureau, established at The Hague, serves as registry for the Court. This Bureau is the channel for communications relative to the meetings of the Court. It has the custody of the archives and conducts all the administrative business.

The signatory Powers undertake to communicate to the International Bureau at The Hague a duly certified copy of any conditions of arbitration arrived at between them and any award concerning them delivered by a special tribunal.

They undertake likewise to communicate to the Bureau the laws, regulations, and documents eventually showing the execution of the awards given by the Court.

With regard to Article 23, the **Reporter** states that two points were considered by the committee. Count DE MACEDO had requested that the number of persons to be designated by each State as members of the Court be brought back to two.

[50] The committee examined this amendment with care.

A Power having insisted that the number of four members should be preserved and several others having supported this view, it was so decided.

Moreover, the committee would consider the proposed modification improper, the project having already been communicated to the Powers.

In so far as the last paragraph is concerned, Count DE GRELLE ROGIER called the committee's attention to the situation created with regard to the members of the Court. Will those of its members who are in their own country enjoy diplomatic privileges and immunities?

This state of affairs would, in the opinion of the representative of Belgium, cause serious difficulties from the point of view of the constitutional law of some of the States. The committee of examination considered it advisable to state that only the members who are foreigners in the country where the Court sits should enjoy these privileges and immunities.

Consequently it was decided to insert after the word "*duties*" the words "*and out of their own country.*"

Count de Grelle Rogier states that he is not entirely satisfied with the insertion of these words. He asks when these privileges and immunities begin.

Mr. Descamps replies that they begin with the commencement of the actual exercise of the duties of arbitrator.

Count de Grelle Rogier would like to have this restriction inserted in the article.

Mr. Martens is of the opinion that the arbitrator does not enter upon the exercise of his duties until he sets out for the country where the Court sits.

In order to meet the wishes of the delegate of Belgium, Mr. Lammasch suggests that the last paragraph of Article 23 be transferred to the end of Article 24. It would then be perfectly clear that this provision relates only to the members of each special tribunal during the performance of their duties.

Count de Grelle Rogier concurs in this amendment, which is approved by the Commission.

Mr. Asser, going back to the amendment submitted by Count DE MACEDO, observes that one of the arguments presented in favor of four arbitrators was the following:

This admits of the designation, for the list, of members of different professions — diplomats, jurists, military men — and thereby enhances the prestige of the institution.

He asks himself whether the large number which will be reached if each Power should name four members would not thwart this purpose. Moreover, the three requirements which a person must fulfill according to paragraph 1, in order to appear on the list of arbitrators, would not seem to admit of extending the selection to others than jurists and diplomats. As this question will be submitted to the full Conference, he asks the delegate of the Power which proposed the number of four, whether he could not change his opinion.



Dr. **Zorn** does not see that the three above requirements exclude the appointment of persons of some other profession.

Article 23 is adopted in the following form:

Within the three months following its ratification of the present act, each signatory Power shall select four persons at the most, of known competency in questions of international law, of the highest moral reputation, and disposed to accept the duties of arbitrators.

The persons thus selected shall be inscribed, as members of the Court, in a list which shall be notified to all the signatory Powers by the Bureau.

Any alteration in the list of arbitrators is brought by the Bureau to the knowledge of the signatory Powers.

Two or more Powers may agree on the selection in common of one or more members.

The same person can be selected by different Powers.

The members of the Court are appointed for a term of six years. Their appointments can be renewed.

In case of the death or retirement of a member of the Court, his place is filled in the same way as he was appointed.

The Commission passes to Article 24.

The **Reporter** calls the Commission's attention to three points:

(1) The fact had not been sufficiently emphasized that when the Powers desire to have recourse to the Permanent Court, the selection of the arbitrators must be made from the general list.

(2) The present reading would lead to the belief that the Powers may not [51] tify their decision before the tribunal is fully constituted. This is a defect which the committee considered ought to be remedied.

(3) The committee was of the opinion that it would be preferable to insert the last three paragraphs of Article 31 in full instead of merely referring to that article.

Consequently, and in order to satisfy certain observations made by Mr. **ROLIN**, a few modifications have been made.

Count **de Macedo** asks for explanations as to the manner in which the umpire will be chosen after the parties at variance have both designated their arbitrators. Will they come to an understanding directly with each other on this score, or will they address themselves to the Bureau?

The **Reporter** explains that no notification is to be sent to the Bureau as long as the selection of the arbitrators has not been finally determined.

Baron **Bildt** regrets that the committee of examination did not adopt his wording in the matter of the selection of an umpire. The present reading, in his opinion, leaves room for uncertainty.

His idea has been partially met. It is stated that in case the choice of the umpire is not approved, all that is necessary is not to notify the Bureau.

But it is an unsatisfactory method of procedure not to notify the Bureau of the constitution of the tribunal after the umpire has been chosen.

He compares this expedient with slipping out by the back-stairs.

He would prefer some other method of settling the question.

If, for example, it were stated in the minutes that the two arbitrators are merely the agents of the Government that has elected them up to the time when they enter upon the performance of their judicial duties, it goes without saying that the selection determined upon by the arbitrators will always be certain to be approved by the Government.

If the Commission considers that the arbitrators are — as regards the selection of the umpire — the agents of the Governments which have appointed them, this opinion should be expressly stated in the minutes, which will be frequently consulted as a commentary on the draft arbitration convention.

The delegate of Sweden and Norway would be satisfied with such a statement.

The **Reporter** says that the committee unanimously rejected approval of the appointment of the umpire by the Governments. This method of procedure might place the umpire in a peculiar position. Under these circumstances, he would not accept the office tendered him.

This would give rise to a great danger: the committee agreed upon this point. Chevalier DESCAMPS thinks that what Baron BILDT wishes would be brought about in practice, for the Governments will take all necessary precautions and may exert an indirect influence in the matter of the selection of the umpire. But he must energetically oppose the system of approval of the umpire by the Governments.

In practice the result desired by the delegate of Sweden and Norway may be attained, but the whole work we are undertaking would be endangered by the insertion of a clause of this nature in the draft.

Mr. **ASSER** recalls that the reporter, Mr. DESCAMPS, has asserted that the Government which appoints an arbitrator could have an understanding with him as to the selection of an umpire. Mr. ASSER thinks that in following such a course the Governments will be exercising a formal right.

It might be concluded from Mr. DESCAMPS' address that this should not be entirely the case, but the delegate of the Netherlands, on the contrary, is of Baron BILDT's opinion. From the point of view of legal interpretation, a Government does nothing reprehensible when it endeavors to exert its influence in the selection of an umpire.

It seems to him that the delegate of Sweden and Norway has already indicated the distinction to be drawn. In effect, to show that the Governments are not detracting from the independence of the arbitrators, two phases must be distinguished. First, while the tribunal is being constituted, they are the agents of the Government, but as soon as the tribunal has been constituted, the arbitrator must lay aside his character as agent. He then becomes merely an independent judge, whose duty it is to be guided by the law, without allowing his conduct to be influenced by the Government that appointed him.

He therefore thinks it advisable to make express mention of this principle.

Mr. **HOLLS** says that he is entirely in accord with the ideas expressed by Mr. ASSER. It seems to him necessary to set forth the fact that the basis of arbitration is the absolute agreement of the two parties as regards the selection of the arbitrators and the umpire. It is therefore important to allow no doubt to subsist as to the principle that the two litigants must be entirely satisfied with the choice of the members of the tribunal.

But express mention of the right of refusal would create great dangers and complications.

Assuredly the first duty of the arbitrators is to elect an umpire, and we wish to emphasize the fact that they must perform this duty to the satisfaction of [52] their Governments, if we say that the machinery of arbitration does not begin to move until after notification that the tribunal has been completed, including the appointment of the umpire.

Thus the two Powers will have sufficient guaranties, for if any one of the

arbitrators should not be acceptable to them, they would only need to refrain from notification.

It would be regrettable to emphasize the precaution.

Mr. **Martens** recalls that Mr. **ASSER** said that the arbitrators, once appointed, must lay aside their character of agents of their Governments. Consider the case of two arbitrators who are appointed by virtue of the *compromis* concluded by their Government, the situation of each group of arbitrators is identical. Each group is therefore *appointed* by its Government; it is not merely *in accord* with it.

The Government, in appointing them, has shown them the greatest mark of confidence.

It is then the task of these four persons to choose the umpire. It is not to be supposed that these arbitrators, who enjoy the full confidence of their Governments, will choose an umpire who is not worthy of this honor, and that they will make their selection without the full approval of their Governments. The confidence reposed in the arbitrators naturally extends to the use they make of their right to appoint the umpire. It is absolutely necessary that the umpire be regarded by his colleagues as a man of the greatest authority. It is for this reason that the choice should be free and not forced, for if one group of arbitrators felt that the Government of another group insisted upon the selection of a specific person, it would oppose the selection for this very reason.

It is therefore useless to insert a special provision on this point. There will always be cooperation of the Governments.

Baron **Bildt** officially acknowledges the declarations of Messrs. **ASSER** and **HOLLS** and accepts their interpretation, which he desires to have set forth in the minutes. He will therefore not insist upon the insertion of a special provision of this kind. He desires, however, to have the statement appear that, in his opinion, approval by the Governments of the appointment of the umpire can only increase his prestige. The nascent institution of arbitration cannot be surrounded with too many guaranties.

Chevalier **Descamps** observes that the interpretation in question is not that of the committee of examination.

The **President** says that it will be stated in the minutes that Baron **BILDt** officially acknowledges the interpretation of Messrs. **ASSER** and **HOLLS**.

His Excellency Sir **Julian Pauncefote** would like to know whether diplomatic privileges will be granted to the members of the Court of Arbitration also by the countries which they must traverse to reach their destination.

The **Reporter** and the **President** explain that this question should not be settled by the draft Convention. It will be for the Governments to decide whether they will apply to the members of the Court the same rules of courtesy which it is customary to apply to diplomats to whom, for the rest, they will be assimilated.

Mr. **Lammasch** says that the members of the tribunal cannot be placed in a more favored position than diplomats. The latter do not enjoy extritoriality except in the country to which they are accredited.

Article 24 is adopted in the following form:

When the signatory Powers wish to have recourse to the Permanent Court for the settlement of a difference that has arisen between them, the arbitrators called upon to form the tribunal competent to decide this difference must be chosen from the general list of members of the Court.

Failing the composition of the arbitration tribunal by direct agreement of the parties, the following course shall be pursued:

Each party appoints two arbitrators, and these together choose an umpire.

If the votes are equally divided, the choice of the umpire is entrusted to a third Power, selected by the parties by common accord.

If the agreement is not arrived at on this subject, each party selects a different Power, and the choice of the umpire is made in concert by the Powers thus selected.

The tribunal being thus composed, the parties notify to the Bureau their determination to have recourse to the Court and the names of the arbitrators.

The tribunal of arbitration assembles on the date fixed by the parties.

[53] The members of the Court, in the performance of their duties and out of their own country, enjoy diplomatic privileges and immunities.

Article 25 is read:

The Court sits ordinarily at The Hague.

It has the option of sitting elsewhere with the assent of the parties.

This article is adopted.

Article 26 is read:

The International Bureau at The Hague is authorized to place its premises at the disposal of the signatory Powers for the use of any special board of arbitration.

Even non-signatory Powers may have recourse to the jurisdiction of the Court within the conditions laid down in the present Convention.

Chevalier **Descamps** has submitted an amendment to this article, making the second paragraph read as follows:

The International Court may be called upon to decide a dispute even between non-signatory Powers, or between a signatory and a non-signatory Power, if they have concluded an arbitration convention or a *compromis* setting forth the intention of both parties to have recourse to this Court.

Chevalier **DESCAMPS** states that the object of this amendment is to define the position of non-signatory Powers who may desire to have access to the Arbitration Court. The committee of examination deemed it wise to adopt it.

Mr. **Renault** says that it has been pointed out to him that his amendment does not settle the question whether the procedure thus set in motion should be gratuitous or remunerated. He thinks that it might be indicated in the minutes that it is the Commission's intention to leave the permanent councils free to fix such tariffs as they deem proper.

His Excellency Count **Nigra** is of the opinion that the door of the arbitration Court should be left as wide open as possible. He is therefore opposed to the idea of tariffs.

Article 26 is adopted with Mr. **RENAULT's** amendment.

Article 27 is read:

The signatory Powers consider it their duty, if a serious dispute threatens to break out between two or more of them, to remind these latter that the Permanent Court is open to them.

Consequently, they declare that the fact of one or more of them reminding the parties at variance of the provisions of the present Convention, and the advice given to them, in the highest interests of peace, to have recourse to the Permanent Court, can only be regarded as in the nature of good offices.

Mr. **Beldiman** states that his Government stopped at the principle that arbitration is *optional*. He is therefore obliged to make reservations wherever it is a question of *obligatory* arbitration in the proposed provisions. He suggests that in Article 27 the words "consider it their duty" be replaced by the words "deem it advisable," which relieve the provision of its imperative character.

Baron d'**Estournelles** replies that a reading of the minutes of the committee of examination — particularly the observations made on July 3 last by Mr. **BOURGOIS** and himself in the name of the French delegation — dissipates any misunderstanding with regard to the interpretation which Article 27 admits of. We have not intended to impose any obligation on the parties; they remain entirely free. We have imposed a duty upon the signatory Powers, which is a very different thing.

Why did the committee come to a unanimous decision on this point?

For several reasons, which I shall briefly recall: We wished to anticipate the bitter disappointments which await us if we create a stillborn work; we foresaw that in the majority of cases the Powers in dispute, especially the weaker ones, will not dare to have recourse to an arbitration tribunal and will be deterred by susceptibilities that are usually insurmountable. We therefore did not lose sight of the interests of the weaker States, but on the contrary we opened wide to them the doors of an institution which protects them and by which they will, in the very nature of things, be the first to profit, as was so eloquently said by our **PRESIDENT** yesterday.

Moreover, the committee, with a deep sense of its responsibility, wished to give the act we are preparing its full scope and all its high moral significance by proclaiming that the States have not only rights, but duties. Are [54] we going back on such a declaration? No, it is not to be blotted out.

It was objected the day before yesterday that realities should not be sacrificed to theories, nor the present to the future, and that the necessities of politics should be taken into account, freedom of action reserved to the Governments, and their interests safeguarded.

Those are things which we have not lost sight of; but we have also taken into consideration the fact that the foremost interest of Governments is to keep the public confidence. We are here, gentlemen, to undertake a work of pacification; but we are also all animated by the desire to strengthen governmental authority. Take care that you do not, by excess of circumspection, undermine and discredit this authority instead of doing it a service. Yes, Governments need public confidence, under present circumstances more than ever before; but Governments — let us be under no illusions — will succeed in keeping or in winning this confidence only on the condition, not of claiming new rights, but of recognizing, accepting, and fulfilling their duties toward themselves, toward their nationals, toward mankind. (*Applause.*)

Mr. **Veljkovitch** says that Article 27 has been represented as having been inspired by a sentiment of benevolent solicitude on the part of the great Powers for their weaker sisters. If it is true that the great Powers are animated by this sentiment, nothing will prevent their manifesting the fact outside of the Convention. Therefore, if Article 27 has no other purport, it would be useless.

Again, it has been said that the provision with which we are concerned would give the Convention a high moral import. The best way of ensuring the Convention such an import would have been for the great Powers to admit the principle of obligatory arbitration, which is the most striking expression of the con-

ception of the equality of States and of the desire to see all disputes of a legal nature settled by peaceful means. The delegation of Serbia would not have made any objection to the principle of obligatory arbitration.

Finally, Article 27 appears to duplicate provisions already voted. Article 1 states that the Powers shall use their best efforts to bring about the peaceful settlement of international differences. It would seem as if this engagement already contains the obligation which Article 27 imposes upon the Powers in the matter of arbitration.

The *efforts* which the Powers agree to use will be transformed into deeds, and the first of these deeds will be to advise recourse to the arbitration Court.

Article 27 likewise duplicates Section 2 pertaining to good offices and mediation. The performance of good offices is not required to assume any specified form, and to remind Powers at variance that they may have recourse to arbitration is one form of good offices.

Therefore all the situations provided for in Article 27 have already been covered by the preceding provisions. Is it therefore advisable to insist so strongly upon a stipulation which relates to a matter so delicate as to call forth reservations at every turn?

However that may be, if the Commission decides to adopt Article 27, the delegation of Serbia will be compelled to formulate express reservations with respect to that provision.

His Excellency Count Nigra asks permission to make an observation. He has heard mention made of great and of small Powers. Now there are neither great nor small Powers here, but the representatives of Governments which are absolutely equal, who discuss questions in an independent manner and who have assembled for the sole purpose of executing a work useful to the cause of peace.

Dr. Zorn delivers the following address, of which Mr. ASSER makes a running translation:

My most honored colleague, the delegate of Serbia, has asked why we have not introduced obligatory arbitration into this project. I deem it my duty to answer this question.

There is little doubt that there was a strong current in favor of obligatory arbitration, in the committee of examination; but I must state *that the German Government would not have been able to adopt a project which would have made arbitration obligatory.*

I recognize with gratitude that the members of the committee of examination weighed the serious objections of my Government, in the noble spirit of united efforts in a common cause, which animated them from the outset in their work. The reason for these objections is as follows:

It is true that there is a whole series of special cases of arbitration and that arbitration is no longer a thing unknown. But the experiments thus far made in this field are not of a kind to warrant the contracting of an engagement at the present time with regard to obligatory arbitration.

To proceed in this important matter without sufficient experience would seem to be a dangerous thing and *might lead to discord rather than to harmony.* I believe that the German Government is not alone in regarding the question in [55] this light. It is true that the committee did not vote on this question, but

I have no doubt that our serious objections are shared by others within and without the committee of examination, and by other States.

Under these circumstances, the committee decided to present the project to the Commission and to the Conference on the basis of *optional* arbitration.

On the other hand, the German Government has been impressed with the belief — knowing that it was in accord with all the Governments on this point — that every endeavor tending to preserve peace and good relations between nations deserves most earnest attention. The wishes of the German Government in this respect are in harmony with those of the other Governments represented at this Conference.

Hence my Government has up to the present moment made no objections to Article 27, although perhaps the expression of duty would appear to go a little too far. But there would seem to be no insurmountable difficulties in the way of expressing and emphasizing this *moral* duty. That is why I also have been able to join, and have willingly joined in the views so eloquently set forth by our most honorable President, Mr. LÉON BOURGEOIS, and the other most honorable member of the French delegation. Such are the reasons which led us to include Article 27 in the project.

I admit that Article 27 is in a sense a repetition of other provisions contained in the project. The same ideas are expressed in other places. But that is not a defect. The object of our task is to create a solid basis for the widest possible use of peaceful means in putting an end to international differences. We must not clash with each other because certain things in Article 27 are repetitions.

Therefore, I do not regard the apprehension expressed with respect to Article 27 as warranted. We adopt it as a reiterated recommendation that all peaceful means, in so far as circumstances permit, should be tried to put an end to disputes. That is our opinion, that is the sense in which we interpreted Article 27 in the committee, and that is also, I presume, the opinion of the Governments here represented. I believe that under these circumstances my honorable colleague from Belgrade and the other representatives of the Balkan Powers will also be able to declare themselves in favor of this article.

If the article had a formal legal content, it would have been unacceptable to me too. In that case I should have fully shared the objections of the representatives of the Balkan States. But it has no formal legal content; it contains merely a recommendation of a purely moral character. (*Applause.*)

Mr. Veljkovitch replies that it was not his intention to raise the question of obligatory arbitration, which is not on the Commission's order of business. Consequently he does not feel that it is proper for him to enter upon a discussion of the substance of the question; otherwise he would have been glad to undertake such a discussion, if only to call forth further interesting observations from the honorable gentleman who has just spoken and whose vigorous eloquence and high scientific standing he greatly esteems. If he has mentioned obligatory arbitration, it was solely for the purpose of showing things up in their true light and of demonstrating that Article 27 could not be regarded — as it had been attempted to represent it — as the great citadel of peace, since alongside of it there are institutions of incomparably greater scope from the standpoint of peaceful relations and the maintenance of peace among States, which not only have not been included in the Convention, but which have been stricken out of the draft where they had originally appeared.

The fact that he has declared himself in favor of obligatory arbitration in cases of a legal nature is proof enough that what he objects to in Article 27

is not the instrumentality of peace and concord among States; the fault he finds with the provisions of this article is that they are a sort of invitation to the great Powers to adopt measures which will wound the legitimate self-respect and dignity of the smaller States. For it is futile to proclaim that there are no great and no small Powers; that does not change the reality of things, and reality will never admit of giving Article 27 the character of reciprocity by virtue of which small Powers could, without overstepping the bounds of international propriety, invoke the provisions of this article against great Powers.

In any event the mitigating explanations that have been presented with regard to Article 27 square better with Mr. BELDIMAN's amendment, which substitutes the words "deem advisable" for the word "duty," than with the present reading, where the obligation of third Powers to intervene is clearly and formally expressed and might therefore the more easily give rise to abuses in practice.

Mr. Odier speaks as follows:

Although Count NIGRA has recalled that there are here neither great nor small Powers, we must nevertheless admit that States with limited population and territory regard questions of intervention in a different light. I can [56] therefore understand to a certain extent the apprehensions of the delegate of Serbia, and I can understand them the better because I also belong to a country with narrow boundaries and an inconsiderable number of inhabitants. I should nevertheless like to point out to Mr. VELJKOVITCH a new and important fact. We have endeavored to open a new era in international relations. Up to the present time war has been left to the pleasure of the nations at variance, and neutral Powers did not do all they could to prevent it. Now we must remember that this era imposes new duties. Neutrals have duties to fulfill. They must no longer be satisfied with remaining silent, more or less disapprovingly; they must no longer permit two Powers to appeal to arms until every effort has been made to prevent such a calamity.

One of our colleagues endeavored to characterize the rôle of neutrals at such a juncture and hit upon the happy word "pacigerent." This term will be sanctioned by the Hague Conference. That is why I have supported the proposal of the French delegation, considering it as the sanction of a duty on the part of neutrals. (*Applause.*)

Mr. Holls makes the following remarks, which are translated by Baron D'ESTOURNELLES:

I should like to say a few words in favor of Article 27 and to explain why I am so completely in harmony with the advocates of this article.

The delegate of Serbia has recalled, in this connection, the question of obligatory arbitration, saying that the Powers had stopped halfway and had been unwilling to proceed to the end of the road. Allow me to state that in the opinion of the committee there was no connection between obligatory arbitration and the notion of duty.

I desire to lay stress upon the following fact, which is the cause of my personal conviction: the absence of Article 27 would have been fatal to the Convention, which without this article would be in danger of not being utilized and of becoming a dead letter. It was necessary to express the idea of the *moral duty* of the States, not only toward themselves, but toward mankind. This idea, this simple word will inaugurate a new era, in which the peoples will



recognize their bonds of solidarity and the imperative obligation of interesting themselves not only in their own peace, but in that of their neighbors.

Moreover, this article does not imply an obligation in the *juristic* sense of the word, but an obligation of a *moral nature*. It is in this sense that the clear-cut adhesion of the American delegation, of the entire committee of examination to the proposal of the two French delegates was brought about. As for me, I rejoice that such an idea was formulated, for I consider it the necessary culmination of the task we have in hand. (*Applause.*)

Mr. Veljkovitch replies that the declarations and observations which have been made do not seem to him of a nature to attenuate the objections which he has presented. He feels that he must maintain his point of view and desires to set forth two main points in connection with the interpretation of Article 27.

In the first place, he understands that by the expression "*serious dispute*" (*conflict aigu*) appearing in this article is meant the kind of *serious dispute* (*conflict grave*) referred to in Article 2 as capable of bringing on war. It is therefore only in absolutely exceptional cases, where peace is endangered, that the provisions of Article 27 may be applied.

In the second place, the intervention contemplated by this article may only be considered an act of good offices along the same lines as the intervention covered by Section 2. The explanations which have been made with respect to the various articles of this section, therefore, also apply to Article 27, as well as the general reservation which the delegation of Serbia felt it necessary to make regarding Section 2.

In this sense it has been specifically decided; that the good offices mentioned in Article 27 may be performed only with the extreme discretion and caution required when taking such a step; that these good offices may not be performed in such form and under such circumstances as might give them the appearance of intervention in the domestic affairs of a State; and, finally, that the refusal of a Power to follow the course pointed out to it may never be regarded by the other as an unfriendly act.

Subject to this interpretative declaration, the delegation of Serbia would be able to accept Article 27.

The President takes the floor and speaks as follows:

GENTLEMEN: Before we pass to a vote on his proposal, I ask the delegate of Serbia to be permitted to make a final appeal to him. I do so both in the name of the French delegation, which fathered Article 27, and as president of the Commission.

Since the opening of the Conference, we have succeeded on more than one occasion in joining hands and in reaching a unanimous point of view on questions with regard to which we appeared at first to be divided. It would be a notable achievement, the moral importance of which is, in my opinion, beyond expression, if we should succeed in showing the world that we are also unanimous as regards Article 27, which marks one of the essential points of the institution of arbitration.

When I examine the ideas which have caused Mr. VELJKOVITCH to make reservations with regard to Article 27, I can say that none of these ideas [57] can call forth, and none of them has called forth, any objection. All the speeches you have heard, all the declarations which have been made concerning the meaning and the scope of this article are at one in holding that it

should be adopted, and I desire expressly to confirm what has been said with such force by all the members of the committee of examination.

The disputes contemplated by Article 27 are indeed only those which might imperil peace. It is only with respect to such disputes that we regard as proper the friendly appeal of the signatory Powers to the parties at variance to have recourse to arbitration.

As for the apprehension expressed by the delegate of Serbia that a strong Power may make use of Article 27 for an attempt at unwarranted intervention in the affairs of a weaker Power, I shall merely say that, if a Power were to act in such a way, far from having the right to invoke Article 27, it would, in my opinion, be acting absolutely contrary to its purpose and spirit. As for us, if this article could have such a result, not only would we not have fathered it, but we would have energetically opposed it and refused it our vote, if it had been submitted by another delegation.

Mr. VELJKOVITCH has asked of what practical use is Article 27. I shall not repeat the reply that was made to him. It was shown that it is necessary to recall as regards arbitration the principles which appeared in the first article of the Convention, by which the signatory Powers undertook to use their best efforts to bring about a peaceful settlement of international disputes. These principles have been applied in determining the character of good offices which offers of mediation have, in our opinion. It was necessary and logical to say as much for the advice to have recourse to the Permanent Court of Arbitration and to state the duty of the Powers to make a sincere effort in this as in other forms of settlement for the maintenance of peace among the nations.

But it is not merely a question of the practical utility of this provision. Be assured, gentlemen, that what persuades us to defend it so energetically is that it seems to us to have a moral significance, the importance of which will be better and better understood as time goes on and after our labors are ended.

Certain persons, gentlemen, who do not realize the power of an idea, would have us believe that what we have done here is a thing of little consequence. I am convinced, on the contrary, that when we have left this Conference, when we are no longer burdened with a legitimate concern for the special interests of each nation, which we have been forced to take into account, we ourselves will be better able to judge of the importance of our work, and the farther we proceed in the corridors of time, the more clearly will this importance stand revealed. The moral significance of the provisions of Article 27 lies wholly in the fact that a common duty as regards the maintenance of peace among men is recognized and asserted among nations. Do you believe it to be a thing of little consequence that in this Conference—that is to say, not in a meeting of theorists and philosophers engaged in free discussion merely on their own responsibility, but in an assembly in which the Governments of nearly all the civilized nations are represented—the existence of this international duty has been proclaimed, and that the conception of this duty, from now on imbedded for all time in the conscience of the peoples of the world, will make itself felt hereafter in the acts of Governments and of nations? If my colleagues who have been opposed to this article will permit me to say so, I feel that their eyes are not turned in the direction in which they should look. They have seemed to be concerned with the conflicting interests of the great and the small Powers in this matter of arbitration. I shall repeat what has been said by Count NIGRA: there are neither great nor small Powers here; all are equal before the work

to be accomplished. But if this work is to be more advantageous to one than to another, would not the weaker nations surely profit by it the more? Yesterday in the committee of examination I said to our colleagues on the opposite side: Every time in the history of the world that a tribunal has been instituted and that a thoughtful and impartial decision has thus been enabled to rise above the clash of interests and passions, has it not been another guaranty to the weak against the abuses of force?

It will be the same, gentlemen, between nations as between men. International institutions, like this one, will be the guaranty of the weak against the strong. In the clashes of force, when it is a question of soldiers of flesh and steel, there are great and small, weak and strong. When it is a question of piling up swords on both sides of the scales, one side can be heavier and the other lighter. But when it is a question of weighing rights, there is no longer any inequality, and the rights of the smallest and weakest weigh just as much on the scales as the rights of the greatest.

This is the sentiment which has inspired our work, and in carrying it out we have had the weak especially in mind. May they understand our motives and respond to our hope by joining in the efforts we are making to govern the future of mankind in ever-increasing measure by the principles of law. (*Prolonged applause.*)

Mr. Veljkovitch replies that he is glad the observations which he presented regarding Article 27 have given the Commission the opportunity of hearing so eloquent an address. He hopes that the construction put upon this [58] provision by the PRESIDENT will be faithfully reproduced in the minutes of this meeting. It has made the principle laid down acceptable, and the delegation of Serbia is happy to be able to support it under these conditions.

The President states that the Commission is in agreement as to Article 27 and asks whether any member has anything further to say on this article.

Dr. Stancioff speaks as follows:

If it is admitted that it is a duty to recall the existence of the Permanent Court—it will always be a benefit—the method to be followed in performing this duty should also be indicated. The word “recall” seems to me too weak alongside of “duty.”

And if it is not desired to involve diplomacy in this question, through what channel should steps be taken? Through the Bureau of Permanent Council mentioned in Article 28? This method of procedure might perhaps be too long, for the country which deems it its duty to bring arbitration to the attention of the Power that is in danger of conflict will be obliged first to address itself to the Permanent Council; the Council will have to call together five members in order to deliberate, and during this interval the conflict may break out before the communication is transmitted.

That is why we must try to hit upon the most effectual and speedy method of tendering good offices, if we wish them to be of any service.

Mr. STANCIOFF is informed that official note is made of his observation, and Article 27 is adopted.

Article 28 is read:

A Permanent Administrative Council, composed of the diplomatic representatives of the signatory Powers accredited to The Hague and of the Netherland Minister for Foreign Affairs, who will act as president, shall be instituted in this town as soon as possible after the ratification of the present act by at least nine Powers.

This Council will be charged with the establishment and organization of the International Bureau, which will be under its direction and control.

It will notify to the Powers the constitution of the Court and will provide for its installation.

It will settle its rules of procedure and all other necessary regulations.

It will decide all questions of administration which may arise with regard to the operations of the Court.

It will have entire control over the appointment, suspension or dismissal of the officials and employees of the Bureau.

It will fix the payments and salaries, and control the general expenditure.

At meetings duly summoned the presence of five members is sufficient to render valid the discussions of the Council. The decisions are taken by a majority of votes.

The Council communicates to the signatory Powers without delay the regulations adopted by it. It addresses to them an annual report on the labors of the Court, the working of the administration, and the expenditure.

Chevalier Descamps says that this article has undergone several modifications.

In the first place, in order to meet the wishes of his Excellency Count NIGRA, the number of Powers who must have ratified the Convention before the Permanent Council may be constituted was raised from six to nine (paragraph 1). In the second place, the committee complied in three respects with the desire expressed by his Excellency Count WELSERSHEIMB:

(1) In paragraph 1 the word "administrative" was inserted between "Permanent" and "Council."

(2) In paragraph 5 the words "of administration" were inserted after the word "questions."

(3) Finally, the last paragraph was made to assume the following form: "The Council communicates to the signatory Powers without delay the regulations adopted by it. It addresses to them an annual report, etc."

It was, however, understood that this communication of the regulations does not have the effect of making these regulations contingent upon the approval of each Power.

His Excellency Count Welsersheimb states that he is satisfied with these modifications.

Article 28 is adopted.

Article 29 is read:

The expenses of the Bureau shall be borne by the signatory Powers in the proportion fixed for the International Bureau of the Universal Postal Union.

This article is adopted.

[59] The Commission passes to Chapter III (Arbitration procedure).

Article 29 *bis* is read:

With a view to encouraging the development of arbitration, the signatory Powers have agreed on the following rules which shall be applicable to arbitration procedure, unless other rules have been agreed on by the parties.

This article is adopted.

Article 30 is read:

The Powers which have recourse to arbitration sign a special act (*compromis*), in

which are clearly defined the subject of the dispute and the extent of the arbitrators' powers. This act implies an engagement of the parties to submit in good faith to the arbitral award.

This article is adopted.

Article 31 is read:

The duties of arbitrator may be conferred on one arbitrator alone or on several arbitrators selected by the parties as they please, or chosen by them from the members of the Permanent Court of Arbitration established by the present act.

Failing the constitution of the tribunal by direct agreement between the parties, the following course shall be pursued:

Each party appoints two arbitrators, and these together choose an umpire.

If the votes are equally divided the choice of the umpire is entrusted to a third Power, selected by the parties by common accord.

If an agreement is not arrived at on this subject, each party selects a different Power, and the choice of the umpire is made in concert by the Powers thus selected.

This article is adopted, with the reservation of Dr. STANCIOFF's observation, to wit, that the two arbitrators provided for in paragraph 3 may belong to the interested country.

Article 32 is read:

When the arbitrator is a sovereign or the chief of a State, the arbitration procedure is settled by him.

This article is adopted.

Article 33 is read:

The umpire is *ex officio* president of the tribunal.

When the tribunal does not include an umpire, it appoints its own president.

Mr. Papiniu desires to call the Commission's attention to a situation which it seems to him has not been foreseen. What would happen if an even number of arbitrators should be appointed and if, in the absence of an umpire, there should be a tie vote on the award?

The President says that the committee did not consider that the tribunal could be composed of an even number of arbitrators without the Powers seeing to it that an umpire was designated. If such a case should occur, it would be like stepping wantonly into a dispute, and such an hypothesis does not seem to be reasonable.

Chevalier Descamps says that in laying down the rules for the appointment and the prerogatives of the umpire, the difficulties pointed out by Mr. PAPINIU have been forestalled to a certain extent. The draft Convention cannot go farther than that.

If, however, it should happen that an arbitration tribunal found it impossible to reach a majority decision, and if it is not desired or is found impossible to appoint an umpire to break the deadlock, it will be for the Governments concerned to remedy the situation. Mr. DESCAMPS can see no other solution, and he cannot consider the possibility of giving any one of the arbitrators a preponderant vote. The committee is, however, disposed to examine any amendment that Mr. PAPINIU may wish to formulate in writing.

Mr. Papiniu replies that he did not feel called upon to formulate a positive proposal; he merely wished to point out a possibility which he thought ought

to be considered and which, in his opinion, may present itself in practice.

He leaves it to the eminent jurists who are members of the Commission to give legal form to the idea which he has indicated.

The **President** says that in his opinion it would suffice to mention in the minutes the dangers of the interesting situation pointed out by Mr. PAPINIU, [60] in order to remove the likelihood of their occurrence. He would be very grateful to the delegate of Roumania if he would be good enough to put his proposal in the form of an amendment.

Mr. **Rolin** has listened with interest to the observations which have just been made by the Minister of Roumania with regard to the difficulties that may arise in the matter of the selection of the president of the tribunal and of the deliberations on the arbitral award, in the event of the arbitration tribunal's being composed of an even number of arbitrators. The reporter's reply, pointing out the only possible solutions under such a hypothesis, has likewise deserved the whole attention of the assembly. But Mr. **ROLIN** deems it necessary to point to the additional fact that the difficulties in question in no way proceed from any deficiency in the project under discussion. Article 31 of this project provides for the constitution of the arbitration tribunal, which, unless there be a convention to the contrary, is to be composed of five members, one of whom is the umpire.

The difficulty can therefore occur only as the result of a *compromis* in derogation of the rules contained in the project.

The Minister of Roumania doubtless has no intention of restricting the right of parties so to do. We are agreed that they should be allowed entire freedom to conclude such a *compromis* as they may see fit. To his mind, the Conference must resign itself to accept the consequences of the parties' freedom of action, notably the consequences that are likely to occur if there is an even number of members of the arbitration tribunal. Mr. **ROLIN** considers, moreover, that the present exchange of views will be of service in calling the attention of the Governments to the difficulties that may come up, if they constitute a tribunal with an even number of arbitrators, in derogation of the rules laid down in the project.

Mr. **Louis Renault** says that he considers Mr. PAPINIU's observation both judicious and interesting, as it may well happen that there is an even number of judges at the time of rendering the award. In his opinion, in order not to disturb the arrangement of the project under discussion, it would suffice if the Commission's report should mention Mr. PAPINIU's observation and the opinions expressed in the Commission.

Mr. **Papiniu** insists that the Commission take into consideration the observation he has made and that it be taken into account in such form as the Commission may deem proper.

The **President** says that the report will mention the exchange of views called forth by Mr. PAPINIU's remarks and states that, with this reservation, Article 33 is adopted.

Article 34 is read:

In the absence of a stipulation to the contrary, in case of the death, retirement, or disability from any cause of one of the arbitrators, his place shall be filled in accordance with the method of his appointment.

This article is adopted.

Article 35 is read:

The tribunal's place of session is selected by the parties. Failing this selection, Article 25 of the present Convention is applied.

The place thus fixed cannot be changed by the tribunal except by virtue of a new agreement between the interested States.

This article is adopted.

Article 36 is read:

The parties have the right to appoint delegates or special agents to attend the tribunal, for the purpose of serving as intermediaries between them and the tribunal.

They are further authorized to retain, for the defense of their rights and interests before the tribunal, counsel or advocates appointed by them for this purpose.

Mr. **Seth Low** requests that the following question relative to the scope of this article be put to the committee of examination:

Is it the intention that the members of the Permanent Court, who are not members of the special tribunal, shall be permitted to serve as delegates, special agents, counsel, or advocates before the special tribunal? This point is not clear. I propose that the committee of examination consider the question.

The **President** states that the committee of examination will make known, at the opening of the next meeting, its reply to the question propounded by Mr. **SETH LOW**.

He adds that, in view of the lateness of the hour, the meeting might be adjourned to Saturday, July 22, at 2 o'clock. (*Adopted.*)

The meeting adjourns.

## EIGHTH MEETING

JULY 22, 1899

Mr. Léon Bourgeois presiding.

The **President** says that proofs of the minutes of the last two meetings not yet having been distributed, the Commission will hold a final meeting to be devoted to the adoption of the minutes.

Mr. BOURGEOIS recalls that the Commission is to take up the second reading of Section 3 of the project (International commissions of inquiry), which was reserved.

Mr. Delyanni states that he has received instructions from his Government to adhere to Section 3 (International commissions of inquiry) as adopted by the committee of examination.

Mr. Miyatovitch says that the Royal Government of Serbia, which he informed of the result of the last meeting, appreciated the spirit of conciliation in which the committee of examination endeavored to find acceptable solutions and has authorized its delegation to accept the text of Section 3 without reservation.

The **President** officially acknowledges the declarations of the delegates of Greece and of Serbia and thanks them in the name of the Commission.

Mr. BOURGEOIS says that he has received the following letter from Mr. BELDIMAN:

MR. PRESIDENT: I have just received from Bucharest the text, which I hasten to communicate to you, of Article 9 in the form which my Government proposes that it assume:

"In disputes of an international nature involving neither honor nor essential interests, and arising from a difference of opinion on points of fact, the signatory Powers deem it expedient that the parties who have not been able to come to an agreement by means of diplomacy, should, as far as circumstances allow, institute an international commission of inquiry, to facilitate a solution of these disputes by elucidating the facts by means of an impartial and conscientious investigation."

As you will observe, the text prepared by the Royal Government is drawn up in the same spirit as the last text drafted by the committee of examination. The difference is not essential, and I am pleased to hope that you will be good enough to lend your friendly support to our proposal, which is inspired by a sentiment of conciliation and by the desire to facilitate the task of the Conference.

As for the new readings of Articles 10 and 13 adopted by the committee, my Government has no objection to these revised versions.

With the request that you will kindly have the proposal of the Roumanian Government concerning Article 9 brought to the attention of the committee



of examination and of the Third Commission, I take advantage of this opportunity to reiterate, Mr. PRESIDENT, the earnest assurance of my high consideration.

(Signed) A. BELDIMAN.

The PRESIDENT says that Mr. BELDIMAN's communication, containing a new reading for Article 9, was transmitted to the committee of examination, and he gives the reporter the floor.

Chevalier Descamps makes the following report in the name of the committee of examination:

In conformity with the Commission's decision, the committee of examination met for the further consideration of Articles 9-13 of the draft Convention on the pacific settlement of international disputes. The delegates of Bulgaria, Greece, Roumania, and Serbia attended this meeting. His Excellency Mr. EYSCHEN, author of the amendment concerning the new guaranties to be established for the operation of international commissions of inquiry, was also present at the meeting.

The committee examined the modifications to be made in Article 9 in order to bring about its unanimous adoption by the Powers. After a discussion, in which there constantly prevailed the most sincere spirit of conciliation, the committee decided upon the following text:

In disputes of an international nature arising from a difference of opinion regarding facts, the signatory Powers deem it expedient, to facilitate the solution of these disputes, that the parties who have not been able to come to an agreement by means of diplomacy, should institute international commissions of inquiry in order to elucidate all the facts by means of an impartial and conscientious investigation.

[62] The engagement implied in the original text of Article 9 being suppressed, the committee thought that there was no reason for maintaining the reservations made with regard to this engagement.

Moreover, it struck out of the original text the expressions "which may form the object of local determination" and "on the spot," Mr. ASSER having justly observed that these expressions were inexact and applied but imperfectly to the facts that the international commissions of inquiry are called upon to ascertain.

To give precise form to the general proposal which he had made in the commission, his Excellency Mr. EYSCHEN submitted the text of an additional article, which, after undergoing certain changes suggested by Count NIGRA, was adopted as follows:

The international commissions of inquiry are constituted by special agreement between the parties in dispute.

The inquiry convention defines the facts to be examined and the extent of the powers of the commissioners.

It settles the procedure.

At the inquiry both sides must be heard.

The form and periods to be observed, if not stated in the inquiry convention, are decided by the commission itself.

Finally, the committee considered the following amendment to Article 13, submitted by Mr. STANCIOFF: "The report of the international commission of

inquiry leaves to the Governments in controversy entire freedom, either to conclude an amicable settlement based upon this report, or to consider the report as never having been made."

It seemed to the committee that this last expression might be going too far. It thought that the freedom of the States could be put in some other way and preferred the following formula proposed by Mr. ODIER: "The report of the international commission is limited to a finding of facts, and has in no way the character of an award. It leaves to the Powers in dispute entire freedom as to the effect to be given to this finding."

Such are the three modifications proposed by the committee on the subject of international commissions of inquiry.

These proposals are inspired by a desire to attain results acceptable to all. The committee hopes that the proposals will be examined by the Commission from this point of view and that a definite agreement may be reached on these bases, or at any rate on bases similar to these provisions.

The **President** says that the committee of examination, after having studied the Roumanian Government's proposal, succeeded in drafting a text in which the scruples expressed by that Government were taken into account. The object of the new provision suggested by Mr. BELDIMAN was to emphasize the purely optional character of the recourse to commissions of inquiry.

The committee felt that this purpose was accomplished by replacing the words "agree to have recourse" in the original text by "deem it expedient to have recourse." This formula was accepted by the delegations of Serbia and of Greece, but the delegation of Roumania desires to make still stronger the optional character of the provision and requests that the two phrases which had been stricken out—that is to say, "involving neither the honor nor vital interests of the interested Powers," and "so far as circumstances allow"—be retained.

The **PRESIDENT** gives Mr. BELDIMAN the floor to explain his proposal.

Mr. **Beldiman** says that he had reported to his Government the last deliberation of the committee of examination, and that he had informed it of the two readings under consideration.

The Roumanian Government sent him in reply the formula which he communicated to the **PRESIDENT** in writing and which he requests the Commission to adopt.

Mr. BELDIMAN sets forth the reasons why he wishes to have Article 9 modified as he has proposed, and he adds that in addition to restoring the phrase "involving neither the honor nor vital interests of the interested parties," his Government would like to have the Commission also replace the word "vital" by "essential," which seems to it to be sufficient.

He recalls that by accepting Article 9 in this form, his Government wished to give proof of the sincere desire of bringing about unanimity on this difficult question by which it is animated.

Their Excellencies Sir **Julian Pauncefote** and Count **Nigra** support the wording proposed by Mr. BELDIMAN.

The **President** says that the idea of the committee of examination has always been to state clearly the optional character of Article 9. However, if Mr. BELDIMAN believes that the wording he proposes better defines this character, he thinks that the committee will have no objection to supporting it.

Mr. **Lammasch** says that he had proposed an almost identical reading, but

that it was thought not advisable to adopt it, in the belief that the optional tendency of the article was sufficiently plain from the text.

Mr. **Veljkovitch** states that the delegation of Serbia recommended to its [63] Government adoption of the text proposed by the committee of examination. That is the text which he is now authorized to accept.

Besides, he does not think that the modifications which Mr. **BELDIMAN** suggests be made in the text are as palliative as they seem to be considered.

From the point of view in which we are placed, says he, it would seem to be evident that the fewer the clauses capable of provoking discussion that are contained in a provision, the more favorable will the provision be to the smaller Powers, which are not in so advantageous a position as the great Powers to make their opinions tell. In so far as Article 9 is concerned, we find that its optional character is sufficiently indicated in the wording proposed by the committee of examination. If new stipulations are introduced therein, we run the risk of smothering the fundamental idea, that is to say, this optional character. In effect, we can foresee that there will be discussions as to whether national honor and vital interests actually are involved. In these discussions the smaller States will find themselves in a position of inferiority as compared with the great Powers. The same is true of the clause "so far as circumstances allow." Here again it is not the small Powers who will have the advantage. Now, these situations of inequality are the very things we wish to avoid as far as possible. In an international convention, where all the contracting parties should be placed on a footing of equality, we must not, by the use of vague clauses, create situations which would be the very negation of the principle recently proclaimed by Count **NIGRA**, namely, that there are neither great nor small Powers; there are only equal and independent Powers.

We therefore prefer to retain the text of Article 9 in the form proposed by the committee of examination, which excludes, or at least diminishes, the objectionable features I have pointed out.

Mr. **Rolin** strongly insists that Mr. **BELDIMAN**'s proposal be adopted. He recognizes that the reporter's explanations affirm to a certain extent the optional nature of Article 9; but it is essential, in his opinion, that this optional nature should appear from the text itself, not from the report.

Count **de Macedo** states that he was disposed to accept the original text of the article, with the two phrases which have been stricken out. Since the formula proposed by Mr. **BELDIMAN** restores them, the delegation of Portugal is ready to support it in a spirit of compromise.

Mr. **Delyanni** says that he will vote for Mr. **BELDIMAN**'s proposal, if it can secure a unanimous vote.

The **President** puts Article 9 to vote by division.

He asks the Commission to pass, first of all, on the question whether, in its opinion, the two phrases which Mr. **BELDIMAN** desires restored, should be added to the committee's text. The Commission decides almost unanimously — there being only one negative vote (that of Serbia) and one abstention (that of Turkey) — to restore the two phrases in the form desired by Mr. **BELDIMAN**.

Mr. **Veljkovitch**: We were invited to attend the meeting of the committee of examination, so that we might know at once the text to be submitted to our Government. We accepted the committee's invitation, we communicated to our Government the text adopted by the committee of examination, with

a favorable recommendation, and our Government hastened to accept the proposed reading. Now the text of the committee of examination is modified by the Commission, and no one has defended this text before the Commission. I desire that it be expressly stated that it is the text of its own committee of examination against which the Commission has voted.

The **President** confirms the fact that it is indeed the text of the committee of examination against which the vote has been cast.

Mr. **Miyatovitch** states that he was obliged to vote against the proposal of the delegate of Roumania by virtue of instructions previously transmitted to him. He has no doubt that his Government will permit him to join in the unanimity which has just been manifested.

The **President** thanks the delegate of Serbia for his declaration and puts Article 9 as a whole to vote in the following definitive form:

In disputes of an international nature involving neither honor nor essential interests, and arising from a difference of opinion on points of fact, the signatory Powers deem it expedient that the parties who have not been able to come to an agreement by means of diplomacy, should, as far as circumstances allow, institute an international commission of inquiry, to facilitate a solution of these disputes by elucidating the facts by means of an impartial and conscientious investigation.

[64] Baron **Bildt** requests an explanation of the omission of the expression "on the spot," which appeared in the original text.

Mr. **Asser** explains that the omission of the words "on the spot" is the necessary consequence of the omission of the passage "which may form the object of local determination," voted at his suggestion by the committee of examination, in order to give the institution a more general scope by extending it to all questions concerning points of fact. This can be done without difficulty when recourse to these commissions is freed from its obligatory character.

The **President** adds that the committee was of the opinion that the original reading unduly restricted the scope of Article 9 by excluding, for instance, cases of maritime disputes in which it is evident that investigation *on the spot* would not correspond with reality.

After these explanations Article 9 is adopted without a vote in the form proposed by Mr. **BELDIMAN**.

The Commission passes to Article 10.

Chevalier **Descamps** states that the text of this article is brand new. It was adopted by the committee in deference to the desire expressed by his Excellency Mr. **EYSCHEN** that the conditions under which commissions of inquiry would be called upon to undertake their investigations be determined. It is therefore proposed that Article 10 read as follows:

The international commissions of inquiry are constituted by special agreement between the parties in dispute.

The inquiry convention defines the facts to be examined and the extent of the powers of the commissioners.

It settles the procedure.

At the inquiry both sides must be heard.

The form and the periods to be observed, if not stated in the inquiry convention, are decided by the commission itself.

Chevalier **DESCAMPS** says that in wording this article, the committee borrowed certain provisions from arbitration procedure. Thus the necessity of

a special convention, as stated in the first paragraph, is similar to the stipulation in Article 30 relative to the arbitration *compromis*.

The two provisions that follow are also borrowed from arbitration procedure.

The committee wished to state in a formal manner that both sides must be heard in the investigation.

Finally, as regards the form and periods to be observed, it was decided that they should be determined by the convention, but that the commission itself should settle these matters, as is provided in Article 48, in case the convention itself should not settle them.

Article 10 is adopted.

Article 11 is read:

The Powers in dispute undertake to supply the international commission of inquiry, as fully as they may think possible, with all means and facilities necessary to enable it to become completely acquainted with and to accurately understand the facts in question.

His Excellency Sir **Julian Pauncefote** asks why the expression "the interested Powers" has been replaced by "in dispute."

The **President** replies that it was desired to limit within narrow bounds the scope of the article and to prevent Powers that are strangers to the dispute, although interested in its settlement, from unwarranted intervention in the controversy.

His Excellency Sir **Julian Pauncefote** states that he is satisfied with this explanation.

Article 11 is adopted.

Article 12 is read:

The international commission of inquiry communicates its report to the interested Powers, signed by all the members of the commission.

Article 12 is adopted.

Article 13 is read:

The report of the international commission of inquiry has in no way the character of an arbitral award. It leaves to the Powers in dispute the option either of concluding a friendly arrangement on the basis of this report or of having recourse subsequently to mediation or arbitration.

Article 13 is adopted.

[65] Section 3, which had been reserved, having thus been adopted, the **President** proposes that the Commission resume the examination on second reading of the articles on arbitration at the point where it left off.

His Excellency Sir **Julian Pauncefote** asks that the Commission take up first Article 26, in which he would like to make two slight changes.

In the first place, he would like to have it stated in the second paragraph, near the end, that "Even non-signatory Powers . . . may have recourse to the jurisdiction of the Court within the conditions laid down in the *regulations*," and not in the Convention, which, as a matter of fact, does not contain any prescription of this kind.

This modification is adopted.

His Excellency Sir **JULIAN PAUNCEFOTE** proposes, in the second place, that the benefit of paragraph 1 relative to the assistance given by the International

Bureau at The Hague to the functioning of courts of arbitration be extended to *commissions of inquiry*.

Dr. **Zorn** would have serious objections to laying down a provision common to commissions of inquiry and courts of arbitration.

His Excellency Sir **Julian Pauncefoot** does not insist upon his proposal.

The **President** recalls that toward the close of the last meeting the discussion of Article 36 had commenced and that Mr. **SETH Low** had expressed a desire for enlightenment on the incompatibility between the duties of members of the Permanent Court and those of delegates, special agents, counsel, or advocates before that Court.

Chevalier **Descamps** makes known the result of the study of this question by the committee of examination.

He says that the committee has decided to meet Mr. **SETH Low's** wishes by inserting the following remark in the report: "No member of the Court may during the exercise of his functions as a member of an arbitral tribunal accept a designation as special agent or advocate before another arbitral tribunal."

Mr. **DESCAMPS** says that this provision was dictated by reasons of propriety which the Commission will appreciate.

Mr. **ASSER** says that he well understands the reasons which have led the committee to impose this incompatibility upon the members of the Court, but he would like to have it stated that the expression "arbitral tribunal" here means any tribunal formed within the Permanent Court of Arbitration.

Mr. **HOLLS** presents the following observations, which are translated by Baron D'ESTOURNELLES:

Far from wishing, like Mr. **ASSER**, to restrict this incompatibility, Mr. **HOLLS** is, on the contrary, of the opinion that it should be extended still further. He thinks that, if there is a sound reason from the point of view of the independence and authority of the arbitrator for this arbitrator to be subjected in his own country to the incompatibility pointed out by Mr. **SETH Low**, it is just as important that he should be subject to the same disqualification in all countries that have recourse to arbitration. That is the rule followed in England and in America: "once a judge always a judge."

Mr. **HOLLS** considers that this rule would be perhaps the only safe one to follow. He would like to propose to the Commission, as he did as a matter of fact propose to the committee of examination, that the members of the Court should have the right to accept designations from their own Government or from the Government which may have appointed them, but from no other. It seems to him that the Conference ought not to overstep these bounds, either expressly or by implication. The relations between the judges and the Governments appointing them are, it is true, of a private nature, concern only them, and would probably vary according to circumstances, especially in so far as the question of personal obligations or remuneration is concerned. The question which has just been discussed is of equal interest to all countries, since it is of importance to all that the judges be not only independent but above all suspicion.

It has been contended that, if this principle were to be admitted, the list of arbitrators would be diminished. Mr. **HOLLS** replies that the rule prohibiting merely temporary plurality of office would be too limited in scope, for it would permit plurality of office in the case of an arbitrator who, having formerly sat in an arbitration court, might reappear as an advocate before his erstwhile col-

leagues, with an added authority acquired as the result of his previous functions.

Summing up, Mr. **HOLLS** believes that an arbitrator should never be exposed to the danger of compromising or of diminishing his authority. The prestige of arbitration must therefore be preserved by prescribing an incompatibility which is of interest to all the States.

Chevalier **Descamps** replies, first to Mr. **ASSER**, that the committee had in mind only an arbitration tribunal formed within the Court. He asks the delegate of the Netherlands whether he desires to submit a formal proposal, or whether the insertion of the explanation in the report will suffice.

Mr. **Asser** states that he will be satisfied with the insertion in the report.

Chevalier **Descamps** then replies to Mr. **HOLLS** that the States remain free to lay down such conditions and to establish such incompatibilities as they deem advisable. They have the right to forbid their arbitrators to accept the [66] functions of advocate in any arbitral tribunal in the world; but it is not for the general Convention to make such a provision.

Mr. **Lammasch** remarks that, if it were felt that all the States would apply the restriction that Mr. **HOLLS** asks for, there would be no reason for his proposal, but since there is no certainty on this point, the Commission should take under consideration the suggestion of the delegate of the United States, which attempts to surround the authority and impartiality of the umpire with further guarantees.

Chevalier **Descamps** observes that it is desired to establish incompatibility with regard to persons who perhaps will never have an opportunity of becoming arbitrators and who would be disqualified by the mere fact of having their names inscribed upon a list. That would be an exorbitant provision, which would stand in the way of recruiting the Court. He therefore believes that it is sufficient to have settled the question with regard to one point, leaving the States free with respect to the rest.

Mr. **Holls** says that in this matter the question at issue does not involve a Convention, but rather propriety, tact, and good taste. He had no other intention than that of calling forth the opinions of the Conference on the rule to be followed. He thanks the Commission for the explanations which have been presented and he does not ask for a vote.

Sir **Julian Pauncefote** states that he concurs likewise in the formula submitted by Mr. **HOLLS** and the reporter.

Article 36 is adopted.

Article 37 is read:

The tribunal decides on the choice of languages to be used by itself, and to be authorized for use before it.

The **President** says that Article 37 has been modified from its original form to comply with a request of his Excellency Count **NIGRA** relative to the languages to be employed by the Court itself in its deliberations.

Article 37 is adopted.

Articles 38 to 50 are read and adopted without discussion in the following form:

#### ARTICLE 38

As a general rule arbitration procedure comprises two distinct phases: pleadings and oral discussions.

The pleadings consist in the communication by the respective agents to the members of the tribunal and the opposite party of all printed or written acts and of all documents containing the grounds relied on in the case. This communication shall be made in the form and within the time fixed by the tribunal in accordance with Article 48.

The discussions consist in the oral development before the tribunal of the arguments of the parties.

#### ARTICLE 39

Every document produced by one party must be communicated to the other party.

#### ARTICLE 40

The discussions are under the direction of the president.

They are only public if it be so decided by the tribunal, with the assent of the parties.

They are recorded in minutes drawn up by the secretaries appointed by the president. These minutes alone have an authentic character.

#### ARTICLE 41

After the close of the pleadings, the tribunal is entitled to refuse discussion of all new papers or documents which one of the parties may wish to submit to it without the consent of the other party.

#### ARTICLE 42

The tribunal is free to take into consideration new papers or documents to which its attention may be drawn by the agents or counsel of the parties.

In this case, the tribunal has the right to require the production of these papers or documents, but is obliged to make them known to the opposite party.

#### ARTICLE 43

The tribunal can, besides, require from the agents of the parties the production of all papers, and can demand all necessary explanations. In case of refusal, the tribunal takes note of it.

#### ARTICLE 44

The agents and counsel of the parties are authorized to present orally to the tribunal all the arguments they may consider expedient in defense of their case.

#### ARTICLE 45

They are entitled to raise objections and points. The decisions of the tribunal on these points are final, and cannot form the subject of any subsequent discussion.

[67]

#### ARTICLE 46

The members of the tribunal are entitled to put questions to the agents and counsel of the parties, and to ask them for explanations on doubtful points.

Neither the questions put, nor the remarks made by members of the tribunal in the course of the discussions can be regarded as an expression of opinion by the tribunal in general, or by its members in particular.

#### ARTICLE 47

The tribunal is authorized to declare its competence in interpreting the *compromis* as well as the other treaties which may be invoked in the case, and in applying the principles of international law.

#### ARTICLE 48

The tribunal is entitled to issue rules of procedure for the conduct of the case, to decide the forms and time in which each party must conclude its arguments, and to arrange all the formalities required for dealing with the evidence.



## ARTICLE 49

When the agents and counsel of the parties have submitted all the explanations and evidence in support of their case, the president pronounces the discussion closed.

## ARTICLE 50

The deliberations of the tribunal shall take place in private. Every decision is taken by a majority of members of the tribunal.

The refusal of a member to vote must be recorded in the minutes.

Article 51 is read:

The award, given by a majority of votes, must state the reasons on which it is based. It is drawn up in writing and signed by each member of the tribunal.

Those members who are in the minority may record their dissent when signing.

The **President** says that his Excellency Count NIGRA has withdrawn the proposal which he had submitted with regard to this article and which fixed the period within which the award should be executed. It was agreed that the report should mention Count NIGRA's request, but that the text of the article should not be changed.

Mr. **Veljkovitch** says that at the time of the first reading it had been asked that the necessity of giving the reasons upon which the award is based should be omitted, on the ground that the reasons might be of a political nature and contain criticisms of the acts of the Governments. In his opinion, politics should never be mixed up with an arbitral award. Arbitrators who should bring politics into the award would be overstepping their authority and exceeding their duty. Nevertheless in view of the observation which was made at the last meeting, it would perhaps be well to state in the minutes that it is understood that the arbitral award must never be accompanied by considerations of a political nature.

Chevalier **Descamps** replies that the judge is sovereign in deciding upon the reasons with which he deems it necessary to support his award. We may be assured that he will devote his attention to administering justice and will not meddle with politics.

Article 51 is adopted.

Article 52 is read:

The award is read out at a public sitting of the tribunal in the presence of the agents and counsel of the parties, or they having been duly summoned to attend.

Mr. **Lammasch** asks for an explanation of the meaning of the words "or they having been duly summoned to attend."

After an exchange of observations by his Excellency Count Nigra, Mr. **Renault**, and the **Reporter**, the following reading, suggested by the **President**, is adopted: "The award is read out at a public sitting of the tribunal, the agents and counsel of the parties being present, or duly summoned to attend."

Article 53 is read:

The award, duly pronounced and notified to the agents of the parties at variance, settles the dispute definitively and without appeal.

Article 53 is adopted.

Article 54 is read:

The parties can reserve in the *compromis* the right to demand the revision of the award.

[68] In this case, and unless there be an agreement to the contrary, the demand must be addressed to the tribunal which pronounced the award. It can only be made on the ground of the discovery of some new fact which is of a nature to exercise a decisive influence upon the award and which, when the tribunal decided the case, was unknown to the tribunal and to the party demanding the revision.

Proceedings for revision can only be instituted by a decision of the tribunal expressly recording the existence of the new fact, recognizing in it the character described in the preceding paragraph, and declaring the demand admissible on this ground.

The *compromis* fixes the period within which the demand for revision must be made.

Chevalier Descamps explains that this reading was adopted on the proposal of Mr. ASSER, amended by a proposal of the American delegation.

Mr. ASSER asks whether Baron BILDT's proposal has been taken into account, which provided for the case of a new fact discovered between the close of the pleadings and the rendering of the award.

He says that this suggestion meets an hypothesis which may occur in practice, namely, if important documents constituting a new fact should be transmitted after the close of the arguments. Article 41 could not be applied to such a situation, and Mr. ASSER proposes that it be provided for by replacing the expression "when the tribunal decided the case" by "since it did not come to the knowledge of the tribunal until after the close of the pleadings."

Baron Bildt recalls the reason for his proposal. He mentions the case in which a fact that was presented at the beginning of the trial and passed over as unimportant should subsequently be illuminated by some other fact showing its full force. This would be still another reason for revision, which should not be excluded. However, Baron BILDT states that he is satisfied with the reading proposed by Mr ASSER.

Chevalier Descamps offers a final suggestion that the following wording be adopted: "and which, at the time the discussion was closed, was unknown to the tribunal, etc."

This proposal, in which Messers. ASSER and BILDT concur, is favorably received by the Commission.

Article 54, thus amended, is adopted.

Article 55 is read:

The award is binding only on the parties who concluded the *compromis*.

When there is a question as to the interpretation of a convention to which Powers other than those in dispute are parties, the latter notify to the former the *compromis* they have concluded. Each of these Powers is entitled to intervene in the case. If one or more avail themselves of this right, the interpretation contained in the award is equally binding on them.

This article is adopted.

Article 56 is read:

Each party pays its own expenses and an equal share of the expenses of the tribunal.

The Reporter remarks that the reference to the honoraria of the arbitrators appearing in the original text of this article has been omitted, as it was considered unnecessary.

This article is adopted.

The **President** therefore declares the draft adopted on second reading.

His Excellency **Turkhan Pasha** says that the Ottoman delegation, not having received as yet instructions from its Government, reserves its vote on the draft.

His Excellency **TURKHAN PASHA** is informed that official note is made of his declaration.

Mr. **Veljkovitch** makes the following address:

The first delegate of Serbia has stated that our Government had fully and completely adhered to Article 9 in its new form, as submitted to us by the committee of examination.

As this version has been modified by the Commission, we shall of course be compelled to ask for further instructions from our Government; but our first delegate has already informed you that he is practically certain that the Serbian Government will not wish to stand apart from the unanimous vote in favor of the new text, and that therefore he hopes to be authorized to join the other members of the Commission and vote for Article 9 as revised.

Now that all the difficulties have been removed and the project as a whole adopted, it seems to me that the time has come, and I consider it a sort [69] of duty, to present to this assembly certain explanations, in order to leave no doubts in the minds of the members of the Commission as to the nature of the reasons which prompted our opposition to various portions of the draft.

At the outset I desire to state clearly and categorically that our attitude was not the result of a sort of distrust or even of hostility toward the generous and magnanimous spirit which has pervaded this Conference and to which we would be among the first to pay tribute.

The proof that such was not our feeling lies in the fact that we have not been opposed to any formula or to any institution favorable to the maintenance of peace and the strengthening of pacific relations between States. We have asked only that these formulas and these institutions should contain the same engagements for all the contracting parties. Along those lines we should not have had any objections to accepting institutions that are clearly obligatory, if the other States had been able to come to an agreement and to present them.

The only thought that has guided us during the discussion on the draft Convention was not to permit any clause to enter therein which might have been dangerous to our existence and our dignity as an independent State. Now, we thought that we perceived such a danger in certain of the provisions of the draft, and therefore we deemed it our most sacred duty to arise with all the energy of which we are capable in defense of our heritage of sovereignty and independence, in defense of what we regard as the primary and inviolable rights of every State.

That, gentlemen, is the sole, the *only* reason for our opposition.

But now, as the result of the statements which our honorable **PRESIDENT** made at the last meeting — statements so frank, so clear, manifesting such lofty views, such noble ideas as do him the greatest honor — our apprehensions have been dissipated, and we are able to say that, without giving ourselves over to dangerous illusions, we feel reassured.

The statements you have made, Mr. **PRESIDENT**, we regard as of great importance. Not having before me the text of your speech, I cannot, as I should like to do, quote your very words; but I do not believe that I shall do injustice to your thought in repeating at least a part of your address as follows: "It

has never entered the mind of the Commission to diminish in any way whatever the sovereignty and the independence of States; it has had no intention of touching in any manner the great principle of the equality of independent States; and, finally, the general spirit of the Convention is rather to strengthen the position of small, peaceful States than to make of this Convention an instrument of oppression in the hands of States that are great and powerful."

Upon this interpretation of the general spirit of the Convention, if I have rendered it correctly, the Commission has placed its official seal by receiving it with eager and unanimous applause.

In view of this fact, I believe that I am warranted in saying that this statement will henceforth be the soul of the Convention. It will in future serve as a general guide-post to show clearly and with certainty the spirit in which, in case of doubt, the text is to be interpreted, and I shall always congratulate myself on having been the instigator of this statement.

Under these conditions, Mr. PRESIDENT, we adhere to the draft which the Third Commission has prepared. We regard it as an expression, albeit modest yet sincere, of the general desire for the maintenance of peace. We consider the domain of peace the most propitious domain for our material and moral development and also for the final triumph of the great ideas of justice and equity, in which we never cease to place our hopes. (*Applause.*)

The President replies: We thank Mr. VELJKOVITCH for the words he has just spoken. In going over certain statements that I made at the last meeting, Mr. VELJKOVITCH said that he regarded them as an official interpretation of the spirit of the Convention. My words were merely the expression of the unanimous sentiment which has guided us in our work, and if there should ever be any doubt in future as to our intentions, this interpretation will force itself upon all minds, as it has forced itself upon the members of the Commission.

Gentlemen, we have to-day completed the share that was assigned to us of the work of the Conference, and it only remains for me to transmit to his Excellency, Mr. STAAL, our President, the text of the decisions which we have reached.

Before we separate, I wish to thank you for your kindly courtesy to your bureau.

The committee of examination, which has labored in your midst, has performed, as you know, a considerable and particularly delicate task. You will certainly wish to express your gratitude to it through me and to thank especially [70] Chevalier DESCAMPS and Baron d'ESTOURNELLES, who were good enough to accept, the one the duties of reporter, and the other those of secretary of the committee of examination. (*Prolonged applause.*)

His Excellency Count Nigra speaks as follows:

Gentlemen, we have still another duty to perform. You have witnessed the remarkable manner in which your PRESIDENT has fulfilled his mission. He has presided over our debates, not only with great authority, but with an absolute impartiality and a spirit of conciliation by which we have been profoundly touched. I am sure that I am interpreting the sentiments of all in expressing our gratitude to Mr. BOURGEOIS and in assuring him that we shall go our several ways with the conviction that he has rendered a great and valuable service to the cause in which we have collaborated. (*Loud applause.*)

The President says that he is deeply touched by the words which his Ex-

cellency Count NIGRA has spoken and by the sentiments expressed by him in the name of the Commission. He will never forget the courtesies shown him and he will consider it as the honor of his life that he has contributed to the progress of the common cause.

The meeting adjourns.

The Commission will meet for the last time on Tuesday, July 25, at 2 o'clock, to approve Chevalier DESCAMPS' report.

# NINTH MEETING

JULY 25, 1899

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Mr. **Léon Bourgeois** presiding.

The **President** says that the minutes of the meetings held on July 19, 20, and 22 have been distributed in preliminary proofs, and he declares them adopted, subject to such corrections as the delegates may indicate to the secretariat.

The order of business calls for approval of the report of the Third Commission, drawn up by Chevalier DESCAMPS in the name of this Commission.

His Excellency **Turkhan Pasha** makes the following declaration:

The Ottoman delegation, considering that the work of the Conference is in an honest and humanitarian cause, intended solely to consolidate the general peace by safeguarding the interests and rights of every nation, declares, in the name of its Government, that it adheres to the draft which has just been adopted, on the following conditions: (1) It is formally understood that recourse to good offices, mediation, commissions of inquiry, and arbitration is purely optional and can in no case assume an obligatory character or degenerate into intervention; (2) The Imperial Government shall be free to judge of the cases in which its interests may permit it to accept these means of settlement, and its abstention or refusal to have recourse thereto shall not be considered by the signatory States as an unfriendly act.

It goes without saying that in no case shall the means in question be applied to matters of a domestic nature.

The **President** says that Chevalier DESCAMPS' report having been distributed, he thinks that he can submit it to the Commission immediately for adoption and asks whether any one desires to make any comments on this work.

The report is adopted without comment.

The **President** speaks as follows:

I congratulate myself, gentlemen, on the reply which you have made to my question. I see in it a striking manifestation of your approval of this remarkable work of our reporter.

In drawing up this memorable document, Mr. DESCAMPS has rendered two great services to the cause which has gathered us here together. In the [71] first place, he has, by means of a continuous and perfectly clear commentary, made it possible to understand and to interpret correctly all the clauses which you have adopted with a view to the peaceful settlement of international disputes. I have already said that the first exposition which he made of these provisions would be a sure guide, not only for the delegates in their discussions, but also for all the Governments. I can now say that with your adhesion Mr. DESCAMPS' report will be a useful guide for all civilized nations.

But your reporter has rendered you still another service. Not only has he

correctly interpreted each article according to the intentions of its authors, but he has also illuminated every portion of your work with the light of his high authority and profound learning in international law.

Mr. DESCAMPS is one of those who have devoted themselves most wisely and usefully to the cause of arbitration. He put into service, in addition to the fruits of his experience, all his personal abilities, and I am happy to reiterate here the expression of our profound gratitude. (*Prolonged applause.*)

The PRESIDENT declares the session of the Third Commission closed and asks that the bureau be empowered to approve the minutes of the present meeting. (*Adopted.*)

The meeting adjourns.

**COMMITTEE OF EXAMINATION**





# FIRST MEETING

MAY 26, 1899 <sup>1</sup>

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Mr. **Léon Bourgeois** presiding.

The committee named by the Third Commission, at its session on May 26,<sup>2</sup> proceeds to the election of its board of officers.

The following are unanimously elected:

President and reporter: Chevalier **Descamps**.

Secretary: Baron **d'Estournelles de Constant** is asked to be willing to assume these duties. Mr. **Jarousse de Sillac**, Attaché of Embassy, will fulfill those of assistant secretary.

The committee reviews the practical methods of studying as promptly as possible the different drafts and amendments which may be laid before it.

It acknowledges the receipt of the following documents:

1. "Outlines for the preparation of a draft Convention to be concluded between the Powers taking part in the Hague Conference," *submitted by the Russian delegation*, with a document attached (Draft arbitral code).<sup>3</sup>

2. Proposal made by his Excellency Sir JULIAN PAUNCEFOTE with a view to the creation of a permanent tribunal of arbitration.<sup>4</sup>

3. Supplementary note submitted by the *Russian delegation* for the same purpose.<sup>5</sup>

4. Amendments of his Excellency Count NIGRA to the draft of the Russian delegation.<sup>6</sup>

The committee decides that this last document shall be printed and distributed, as was decided by the Commission in the case of the three preceding documents.

With a view to permitting the Commission on arbitration to meet as soon as possible, the committee decides to prepare for Monday, May 29, a study of the first six articles of the Russian draft, concerning good offices and mediation.

The meeting adjourns.

<sup>1</sup> House in the Wood. Present: Their Excellencies Count NIGRA, Sir JULIAN PAUNCEFOTE, *honorary presidents of the Third Commission*; Messrs. ASSER, Chevalier DESCAMPS, Baron d'ESTOURNELLES DE CONSTANT, HOLLS, LAMMASCH, MARTENS, ODIER, Doctor ZORN, *members of the committee of examination*.

<sup>2</sup> See the minutes of that meeting.

<sup>3</sup> Annex 1.

<sup>4</sup> Annex 2, A and B.

<sup>5</sup> Annex 3.

<sup>6</sup> Annex 4.

## SECOND MEETING

MAY 29, 1899<sup>1</sup>

Mr. **Léon Bourgeois** presiding.

The minutes of the last meeting are adopted.

Chevalier **Descamps** presents the proof of the general abstract of clauses of mediation and arbitration involving Powers represented at the Peace Conference — an abstract which he agreed to make at the request of the Third Commission.<sup>2</sup>

Mr. **Léon Bourgeois**, after having expressed the thanks of the Committee to Chevalier **DESCAMPS**, gives him the floor.

Chevalier **Descamps** speaks as follows:

Upon the initiative of an august person there has been put before civilized States for their consideration the question of the strengthening of international peace. The Powers represented at the Hague Conference are called upon, in a spirit of mutual good-will, to seek the most suitable means to ensure the accomplishment of this great purpose. There is no more magnanimous purpose than that of guaranteeing to peoples "the benefits of a real and lasting peace," and it is a task, noble above all others, for States to give through international agreements "solemn avowal of the principles of equity and law, upon which reposes the security of States and the welfare of peoples."

The provisions which we are to prepare are directly concerned with this purpose.

While the Second Commission has for its mission, in formulating the laws of war, to determine measures suitable to correct the abuses and alleviate the rigors of armed conflicts, we have for our immediate object a search for institutions and fundamental guaranties of such a character as to be powerful safeguards for, or to bring about the prompt restoration of, the peaceful course of the life of nations.

From this point of view the institution of good offices and mediation, international commissions of inquiry, and arbitration claim our attention.

The remarkable draft presented by the Russian delegation, the proposal made by the first delegate of Great Britain, that which the delegation of the United States announces that it has presented, the amendments already introduced by the first delegate of Italy, all these constitute just so many manifestations of the desire of Powers to reach conclusions upon this subject worthy of our age of progress and of great value to the general welfare of humanity as well as to the individual welfare of the various members of the international community.

<sup>1</sup> House in the Wood. Present: Their Excellencies Count NIGRA, Sir JULIAN PAUNCEFOTE, *honorary presidents of the Third Commission*; Chevalier DESCAMPS, *president and reporter of the committee of examination*; Messrs. ASSER, Baron d'ESTOURNELLES DE CONSTANT, HOLLIS, LAMMASCH, MARTENS, ODIER, Doctor ZORN, *members of the committee of examination*.

<sup>2</sup> Annex 5.

The discussions which are about to begin in the committee of examination will undoubtedly show us that these propositions, born of a common desire to serve the interests of peace in the modern world, can be brought into agreement in some better form where their representative tendencies will be blended together so far as they possess new ideas that are legitimate, beneficial, and practically capable of realization. It will be the highest task of the PRESIDENT to promote this happy blending of ideas.

At the outset of our labors, it is not without interest to proceed to a rapid examination of all of the provisions which are submitted to us relating to the first object of our deliberations: good offices and mediation. Such an examination seems to be the most natural and practical introduction to our deliberations. We shall take as a basis for our observations the first six articles of the Russian draft communicated to the members of the Commission under this title: "Outlines for the preparation of a draft Convention to be concluded between Powers taking part in the Hague Conference."

The first article covers in a general way the peaceful settlement of international disputes.

The Powers there declare that they have agreed to use their best efforts to [3] bring about, by peaceful means, the settlement of disputes which may arise between them. Perhaps it will be proper, considering the general character of this article, to substitute for the word "dispute" the generic term "difference." Perhaps the course of the discussion will lead us to take this article out from under the title "Good offices and mediation" and give it a position suitable to it in a collection of provisions relating to the organization of peace. Provisionally, this article might be adopted in its present form. In the main, it states only the firm determination of the Powers to make way for pacific means, as against violent means, for the termination of disputes between States, and the sincere desire which moves them to endeavor to realize, in the world of facts, international pacification. Looked at from this point of view it seems to be a translation into the language of the law of nations of this remarkable passage from the message of His Majesty the Emperor of Russia: "The preservation of peace has been put forward as the object of international policy."

So far as Articles 2 to 6 of the Russian draft are concerned, the various points to be successively studied appear in the following order:

First, we must examine the question of recourse to mediation by the parties at variance before other action.

Secondly, we must consider the matter of the offer of mediation by Powers strangers to the difference.

Finally, we must direct our attention to the three matters common to these two kinds of mediation: the general rôle of the mediator, the time when the mediator's functions cease, and the essential character of these functions. These matters will no doubt lead us to place Article 5 of the Russian draft immediately after Article 2 and consequently change the arrangement of the other articles.

Touching the first and very important question, that of recourse to mediation by the parties at variance, before other action, I observe that Article 2 aims at three clearly distinct points.

It sets forth first the case in which we intend to formulate a new rule of international law, and it describes this case in these words: "in case of serious disagreement, before an appeal to arms." To my mind it would be possible to adopt a more precise terminology to describe the cases in question and to make

the terminology the same in the later articles bearing on the same case, for instance Article 5.

Article 2 then contains the general pledge of such recourse before other action; that is a considerable step in advance when compared with the present situation.

Article 2 finally reproduces the modifications contained in the *vœu* expressed in the thirty-third Protocol of the Congress of Paris of 1856: "so far as circumstances admit." Suppose that we adopt a similar modification, there will be then opportunity to examine into the question as to whether the phraseology is satisfactory and whether, by providing the exception, it sufficiently protects the rule.

The second question to be studied by us, that of the offer of mediation by Powers strangers to the dispute, is itself of capital importance: great progress may also be made on this point. One of the principal objects of the present Conference being to prevent armed conflicts, the search for methods of making mediation easier and more frequent cannot fail to have a considerable place in our deliberations. It is of great importance, in the general law of nations, to vest with the character of a useful institution the offer of mediation, applied in circumstances are favorable, to disputes in which a breach of pacific relations seems to be threatened, without also distinguishing — as does the Russian draft, wrongly it seems to us — between disputes of a political and a legal character. In fact it is not the political or other character of the serious disagreement but its immediate relation to the breach of pacific relations which can in certain respects justify the offer of mediation. In this connection it seems to us that Article 5 of the Russian draft must be fundamentally revised.

Several revisions as to form seem equally necessary, not only in that article which describes the rôle of the mediator in a different manner from Article 3, but in the following articles. That is, however, a secondary matter. The important thing is to make a vigorous effort and to effect some marked progress in the double pathway of recourse to mediation by the parties in dispute on the one hand, and the offer of mediation by Powers strangers to the dispute, on the other.

Good offices and mediation have certainly not failed to exercise a happy influence at times in the past, and many facts might be recalled here in support of this statement. They do not possess, however, the character which belongs to them in a society composed of civilized States fundamentally interdependent one upon the other. It is possible, it is wise, it is entirely worthy of modern States, in taking necessary precautions against possible abuses, to create these institutions as powerful factors working for the maintenance of international peace. It is to the realization of this work that we shall consecrate our first efforts by applying ourselves to the improvement of the principles furnished to us by the Russian draft.

[4] Mr. **Martens** replies with this general observation:

The Russian proposal is especially of a practical character: it cannot escape criticism either from a scientific viewpoint or from the point of view of phraseology, but it is the result of international experience.

Mr. **Bourgeois** replies that such is the estimation in which the committee held this work, and Chevalier **Descamps** is anxious to confirm this statement, at the same time maintaining that his criticisms have a sound basis.

The committee passes to the reading of the articles.

**Examination, upon First Reading, of the Russian Draft Relating to  
"Mediation" and "Good Offices" <sup>1</sup>**

**ARTICLE 1**

(It is understood, upon the motion of His Excellency Count NIGRA, that this article will be reserved for a place at the head of the Convention to be adopted.)

With the purpose of obviating, as far as possible, recourse to force in international relations, the signatory Powers have agreed to use their best efforts to bring about by pacific means the settlement of disputes which may arise between them.

This article is adopted, with the reservation above indicated except for the substitution of the word "differences" for "disputes."

**ARTICLE 2**

Consequently, the signatory Powers have decided that, in case of serious disagreement or dispute, before an appeal to arms, they will have recourse, so far as circumstances admit, to the good offices or mediation of one or more friendly Powers.

Mr. **Asser** asks if there is a reason for retaining these words: "so far as circumstances admit."

He adds that this clause which was included in the Act of Paris of 1856 was omitted in the General Act of Berlin of 1885. To restore it would be to take a step backward.

His Excellency Count **Nigra** supports this statement and says that the insertion of this clause would in some measure destroy the article.

The **President** observes that the Act of Berlin is a special act for a definite purpose; the Powers in drafting that act desired that serious disputes, which were localized in Africa, so far as the subject matter thereof was concerned, should not degenerate into a *casus belli*.

If to-day a general scope be given to this special act we cannot determine in advance what will be the extent of its application.

Doubtless the Powers might bind themselves to ensure such application, but what would be the sanction therefor?

Is it not to be feared that the promises thus made will be evaded or violated, and this would then be a serious blow to the Convention and even to the authority of the signatory Powers? Would it not be better to retain the reservation provided in the Russian proposition?

Mr. **Asser** insists upon his observation and proposes that the reservation be stricken out.

Chevalier **Descamps** observes that the reservation in fact dates from 1856. He adds that so far as dangers to be feared are concerned we would not exaggerate anything; the mediator is not vested with any powers until both of the parties have consented thereto.

The words "so far as circumstances admit" might suggest too arbitrary an interpretation and would tend to cause the rule to be swallowed by the exception.

Mr. **Martens** does not attach great importance to this omission, because in fact, whether it is so stated or not, Powers will not have recourse to good offices unless circumstances permit.

<sup>1</sup> See annexes 1 and 8.

Mr. **Lammasch** makes a compromise motion: "*unless exceptional circumstances render this method manifestly impossible*," in order to show that mediation should be the rule and recourse to arms the exception.

Chevalier **Descamps** insists and develops in support of his opinion arguments drawn from the modern character of war and the common interests which bind civilized States together.

Dr. **Zorn** is of the opinion that the Russian text should be retained in order to leave Powers entirely free in the exercise of their judgment. The new draft does not seem acceptable to him.

[5] Mr. **Asser** insists upon his motion, but in second place would give preference to the draft of Mr. **LAMMASCH** over the provision of the Russian draft.

His Excellency Sir **Julian Pauncefote** and Mr. **Odier** support the arguments of Chevalier **DESCAMPS**.

The **President** sums up the proposals in question: no one asking for the preservation of the old text, the committee must pronounce itself between:

1. The proposal of Mr. **LAMMASCH**.

2. The simple elimination of the reservation ( . . . . ) proposal of Mr. **ASSER**.

For the simple elimination: **PAUNCEFOTE**, **NIGRA**, **DESCAMPS**, **ASSER**, **ODIER** (5 votes).

For the draft of Mr. **LAMMASCH**: **BOURGEOIS**, **HOLLS**, **ZORN**, **LAMMASCH** (4 votes).

Abstention: **MARTENS**.

Baron **d'ESTOURNELLES** did not take part in the vote, each Power having but one vote.

The omission of the words "*so far as circumstances admit*" is agreed to, but with the reservation that the matter may be discussed again later.<sup>1</sup>

Article 2 is therefore adopted except for the modifications above indicated and the substitution of the word "*agree*" for the words "*have agreed*."

### ARTICLE 3

Chevalier **Descamps** reads this article:

In the case of mediation accepted spontaneously by the litigant States the object of the Government acting as mediator is to reconcile the opposing claims and appease the feelings of resentment which may have arisen between these States.

Chevalier **DESCAMPS** proposes that these words at the beginning of the article be stricken out: "*In the case of mediation accepted spontaneously by the litigant States*."

Then he proposes to substitute for the words "*the object of the Government acting as mediator*" these "*the part of the mediator*," and to phrase the close of the article thus: "*between dissident States*."

The complete text of Article 3 would therefore be worded as follows: "*The part of the mediator is to reconcile the opposing claims and appease the feelings of resentment which may have arisen between the dissident States*." This draft of Article 3 is adopted.

<sup>1</sup> It is understood once for all that the committee of examination does not decide finally upon any text; it limits itself to the preparation of texts which will be submitted by it to the Third Commission and which may be revised until the end, even if it be only to make them agree with others. This remark was made at most of the meetings.

## ARTICLE 4

Chevalier Descamps proposes to throw Article 4 to the end of the title as a matter of orderly arrangement.

Agreed to.

As for the phraseology of this article Mr. Asser observes that the words "*when the settlement proposed by it or the bases of a friendly settlement which it may have suggested are not accepted*," lack precision.

Chevalier Descamps supports this statement and after a general discussion the following draft suggested by the PRESIDENT is adopted: "*The functions of the mediator are at an end when once it is declared, either by one of the parties to the dispute, or by the mediator himself, that the settlement or the bases of a friendly settlement proposed by him are not accepted.*"

Consequently the above draft of Article 4, which will be placed at the end of the title, is adopted.

## ARTICLE 5

The Powers consider it useful in case of serious disagreement or conflict between [6] civilized States concerning questions of a political nature, independently of the recourse which these Powers might have to the good offices and mediation of Powers not involved in the dispute, for the latter, on their own initiative, and so far as circumstances will allow, to offer their good offices or their mediation in order to smooth away the difficulty which has arisen, by proposing a friendly settlement, which without affecting the interest of other States, might be of such a nature as to reconcile in the best way possible the interests of the litigant parties.

After a general exchange of views, the text of Article 5 is redrafted as shown below (Article 3) and the following arrangement is adopted:

*New Arrangement*

ARTICLE 1. With the purpose of obviating, as far as possible, recourse to force in international relations, the signatory Powers have agreed to use their best efforts to bring about by pacific means the settlement of differences which may arise between them.

ARTICLE 2. Consequently, the signatory Powers decide that, in case of serious disagreement or dispute, before an appeal to arms, they will have recourse to the good offices or mediation of one or more friendly Powers. (Text to be discussed again.)

ARTICLE 3 (originally Article 5). The signatory Powers consider it useful in case of serious disagreement or conflict between civilized States (omit words: "concerning questions of a political nature") independently of the recourse which these Powers may have to the good offices and mediation of Powers not involved in the dispute, for the latter, on their own initiative and so far as circumstances allow, to offer their good offices or their mediation to the dissident States.

The text of this article will be again modified later by an amendment offered by Count NIGRA.<sup>1</sup>

ARTICLE 4 (originally Article 3). The part of the mediator consists in the reconciliation of the opposing claims and in appeasing the feelings of resentment which may have arisen between the dissident States.

<sup>1</sup> Annex 4; see *infra*, Sections 1 and 2 of Article 3.



ARTICLE 5 (originally Article 4). The functions of the mediator are at an end when once it is declared, either by one of the parties to the dispute or by the mediator himself, that the settlement or the bases of a friendly settlement proposed by him are not accepted.

ARTICLE 6. Good offices or mediation undertaken either at the request of the litigant parties or on the initiative of Powers strangers to the dispute have exclusively the character of friendly advice.

This arrangement having been adopted, His Excellency Count **Nigra** sets forth the scope of Article 3 of the amendment which he presented at the last meeting.

A general discussion takes place upon this subject after which the committee adopts in principle the amendment of his Excellency Count **NIGRA**, and adopts the following phraseology of Article 3:

Section 1. Independently of this recourse, the signatory Powers deem it expedient that one or more Powers, strangers to the dispute, should, on their own initiative, and as far as circumstances may allow, offer their good offices or mediation to the States in dispute.

Section 2. Powers strangers to the dispute have the right to offer good offices or mediation, even during the course of hostilities. The exercise of this right can never be regarded as an unfriendly act.<sup>1</sup>

Mr. **Holls** asks permission to speak for the purpose of presenting a proposition for special mediation.<sup>2</sup>

After an exchange of views, the committee decides that this proposition shall be printed and distributed.<sup>3</sup>

The **President** consults the committee with regard to its order of business and proposes to hold the third meeting on Wednesday, May 31, at 2 o'clock, to examine the draft of Mr. **HOLLS** and to continue the examination of the proposition of Mr. **MARTENS**.

The meeting adjourns.

<sup>1</sup> See annex 8.

<sup>2</sup> See annex 6.

<sup>3</sup> Annex 6.

## THIRD MEETING

MAY 31, 1899<sup>1</sup>

Mr. **Léon Bourgeois** presiding.

The minutes of the last meeting give rise to the following discussion:

Before taking up the regular order of business, Dr. **Zorn** announces that he will propose at the next plenary session to restore the words, stricken out upon the motion of Mr. **ASSER**, in Article 2: "*so far as circumstances admit*" or at least to adopt the text proposed by Mr. **LAMMASCH**, this reservation seeming absolutely necessary to him, and the discussion upon that point having been left open.

Mr. **Martens** asks that it be stated that if he abstained from voting when the vote was taken at the last meeting (Article 2), with regard to the suppression of the clause in question,—while still naturally favoring the text of the Russian delegation—it was only for the purpose of assisting in reaching an agreement.

His Excellency Sir **Julian Pauncefote** observes that of course the deliberations and work of the committee are for the purpose of simplifying those of the Third Commission, but without in any way prejudicing the decisions of that Commission, and furthermore without binding the interested Governments.

The committee unanimously favors this point of view; it considers that its mission is simply to prepare the work for the Commission, and to give it advice, but without having the power itself to reach any decision.

His Excellency Sir **Julian Pauncefote** asks if the recourse provided for in Article 2 should be considered as obligatory.

The **President** remarks that this amounts to asking for the correction of the vote taken at the last meeting upon Article 2. Is this the view of the committee?

Mr. **Martens** asks that a new vote be taken.

Chevalier **Descamps** believes that if necessary the three texts could be submitted to the Commission, leaving it to make the choice.

Mr. **Odier** thinks that the Commission expects from the committee not decisions, but at least clear advice and propositions in definite form: consequently, he asks that the committee vote again, stating its view.

Chevalier **Descamps** seconds this request.

The **President** then puts the proposition to vote in the following terms: "In view of the preceding remarks, all the members of the committee are agreed that as a compromise measure we might adopt the terms of the amendment of Mr. **LAMMASCH** '*unless exceptional circumstances are opposed to it*,' although the

<sup>1</sup> Hall of the Truce. Present: Their Excellencies Sir **JULIAN PAUNCEFOTE**, Count **NIGRA**, *honorary presidents of the Third Commission*; Chevalier **DESCAMPS**, *president and reporter*; Messrs. **ASSER**, Baron d'**ESTOURNELLES DE CONSTANT**, **HOLLS**, **LAMMASCH**, **MARTENS**, **ODIER**, Doctor **ZORN**, *members of the committee of examination*.

omission of the words '*so far as circumstances admit*' was decided upon at the last meeting up to the time of making a new arrangement."

This reservation was unanimously adopted except so far as future modifications might be made in the work of editing the text.

A general discussion then occurs concerning Article 5 of the amendment of his Excellency Count NIGRA.<sup>1</sup> This amendment is adopted in principle. It will bear the number 7 after the six articles of the Russian draft already adopted.

As for the text it will be as follows:

The acceptance of mediation cannot, unless there be an agreement to the contrary, have the effect of interrupting, delaying, or hindering mobilization or other measures of preparation; if it takes place after the commencement of hostilities, the military operations in progress are not interrupted, unless there be an agreement to the contrary.

[8]

### Discussion of the American Draft for "Special Mediation"<sup>2</sup>

The committee passes to the examination of the proposal of Mr. HOLLS concerning a special mediation.

Mr. Holls reads the following note:

Permit me to explain briefly the fundamental idea upon which the proposition now submitted to you is based. It was and is, first and foremost, the undeniable fact, that there are and always will be differences between nations and between Governments which neither arbitration nor mediation, according to the usual acceptance of the term, is calculated to prevent. Nevertheless, it would be wrong to say that every such controversy must necessarily end in hostilities, and although in a case where neither arbitration nor mediation seems to be a possible remedy the chances of avoiding a conflict may be characterized as minimal, it is none the less true that in the interests of peace and in the light of experience the attempt should be made, especially if the means proposed are of a nature to be useful even in case peace should after all be broken.

I beg most respectfully to observe that the project which is submitted to you affords this means.

It is an obvious truth which has found expression in private life by the institution of seconds or witnesses, in affairs of honor, that at the eve of what may be a fatal encounter, it is best to leave the discussion of the points in controversy to third parties rather than to the principals themselves. The second enjoys the entire confidence of his friend, whose interests he agrees to do his best in defending, until the entire affair may be settled; yet nevertheless, not being directly interested in the controversy, he preserves at all times the liberty of a mutual friend, or an arbitrator.

In the second place, I would respectfully submit that every institution or custom which may receive the approval of an assembly like this, having for its object the introduction of a new element of deliberation into the relations between States when the latter have become strained, certainly marks so much progress, and may conceivably be of vital importance at a critical moment.

As a matter of fact, and even with the new guaranties of peace which may be

<sup>1</sup> See annex 4.

<sup>2</sup> See annex 6.

offered by the international court and the most solemn and formal declarations in favor of mediation and good offices, the negotiations between two States in controversy may arrive at a point when it becomes necessary for the representative of the one to say to the representative of the other, "*One more step means war.*" If the proposition which is hereby submitted to you should be adopted, it will be possible to substitute for this formula another, "*One step further and we shall be obliged to appoint a second.*" These words surely will have a grave significance, and yet it would seem that they will have, besides other advantages, that of producing all the good effects of a threat of war without having the aggressive character of a menace, pure and simple, or of an ultimatum. The *amour propre* of the two parties will remain inviolate, and yet all will have been said which must be said.

To give to this idea all of its force it is necessary that the question in controversy should be referred during a given time exclusively to the jurisdiction of the mediating Powers.

At the same time the word "exclusively" need not necessarily be taken in the literal sense.

The mediating Powers will represent third parties, and this clause will have for its principal effect the cessation of all direct communication between the interested parties on the subject of the question in dispute; further diplomatic relations continue undisturbed, with this one restriction.

The mediating Powers will remain free, of course, to enter into negotiations on the subject of the controversy with other Powers if they shall judge it to be useful, and it may often result in simple mediation, possibly ultimately in arbitration.

Finally, and this point is by no means the least important, it is recommended on account of its utility as an agency for peace even in time of war. It is not necessary to enlarge upon this idea,—it is admitted that there are many circumstances where the intervention of mediatory Powers with recognized authority would suffice to convince one of the belligerent States, if not both, that satisfaction has been obtained, and thus to save many lives and many sufferings.

In submitting this proposition I am supported by my American colleagues of the Third Commission, and I felicitate myself upon the fact that it has the privilege of being submitted to the examination of the most eminent of diplomats and statesmen, and of *savants* whose reputation is world-wide. We have the [9] conviction that if you will give to our idea your sanction, it will surely result, sooner or later, in a real gain for the cause of peace.

A general discussion takes place concerning the principle of this proposal. Several members are of the opinion that the HOLLIS motion, which is a new and interesting idea, certainly presents some advantages and should be recommended to the Commission — however they think that if it is adopted it should be inserted not as an amendment to the Russian draft but as a special title.

Mr. HOLLIS indicates one of the advantages of his proposal: it may be applied at any time either *before* or *after* the opening of hostilities, being an invitation to the seconds not to refrain from intervening, but, on the contrary, imposing upon them a sort of moral obligation to intervene, without being discouraged therefrom at any time.

Mr. MARTENS agrees with several of his colleagues in asking that this proposal, if it be adopted, be inserted separately from the draft, because of its voluntary and special character.

The **President** asks if the committee is agreed in *principle* to recommend to the Commission the study of Mr. **HOLLS'** proposition and to decide that it should be inserted as a separate title in the draft.

The committee unanimously replies *aye*.

The committee passes to a first examination of the articles of the **HOLLS** proposition.

Section 1. The signatory Powers are agreed in recommending the application, when circumstances allow, of special mediation in the following form:

Adopted.

Section 2. Adopted in the following form:

In case of a serious difference threatening the peace, the States in dispute choose respectively a Power to which they entrust the mission of entering into direct communication with the Power chosen by the other party, with the object of preventing the rupture of pacific relations.

Section 3. Adopted in the following form:

The question in dispute is regarded as referred exclusively to these Powers. They must use their best efforts to settle the difference.

Section 4. Adopted in the following form:

In case of a definite rupture of pacific relations, these Powers are charged with the joint task of taking advantage of any opportunity to restore peace.

Before adjourning the committee notes upon its records the more detailed proposition which his Excellency Sir **Julian Pauncefote** has had printed to set forth his plan for instituting a permanent tribunal of international arbitration, which he had given to the Third Commission at a plenary session. This document will be printed and distributed.<sup>1</sup>

Mr. **Holls**, on behalf of the delegation of the United States of America, reads:

1. The following memorandum:

Without insisting upon the identical form of their draft, the delegates of the United States are ready to modify the propositions thus far submitted to the Conference, so that the latter may finally contain all that is essential in their own plan. It seems to them that it will not be difficult — after the numerous propositions which may be made upon the subject of mediation, international inquiries, and special arbitration — to add a plan for a *permanent court of arbitration* which will embody the essential features of the American draft.

2. Annex 7 (organization of the tribunal).

The committee decides that it is time to advise the Third Commission as soon as possible of the progress in its work, and, upon the motion of the **PRESIDENT**, it is agreed that this Commission shall be called together on Monday, June 5, at 2:30 at the House in the Wood.<sup>2</sup>

Order of business for this meeting of the Third Commission.

<sup>1</sup> Annex 2.

<sup>2</sup> See minutes of that meeting.

1. Oral report of Chevalier DESCAMPS upon the work of the committee of examination.<sup>1</sup>

2. Study of the first ten articles of the Russian draft (mediation and arbitration) and of the modifications suggested by the committee, following the annexed text.<sup>2</sup>

3. Study of an additional article of his Excellency Count NIGRA also attached hereto (concerning the friendly character of mediation and good offices).<sup>3</sup>

4. Study of a complementary provision suggested by Mr. HOLLS relating to the establishment of a system of special mediation, provision also attached hereto.<sup>4</sup>

5. Communication of the plans worked out, on the one hand, by his Excellency Sir JULIAN PAUNCEFOTE, and, on the other hand, by the delegation of the United States of America for the establishment of a permanent tribunal of arbitration.<sup>5</sup>

(These drafts have been printed and distributed to the Commission.)

The meeting adjourns.

<sup>1</sup> See the minutes of the Third Commission, meeting of June 5.

<sup>2</sup> Annex 8.

<sup>3</sup> Annex 4.

<sup>4</sup> Annex 6.

<sup>5</sup> Annexes 2 and 7.

[10]

## FOURTH MEETING

JUNE 3, 1899 <sup>1</sup>

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Chevalier Descamps presiding.

The minutes of the last meeting are read and approved.

### Examination, upon First Reading, of the Russian Draft Concerning "International Arbitration" <sup>2</sup>

The President states that the order of business for the present meeting should bring up for discussion the draft of the permanent tribunal of arbitration presented by his Excellency Sir JULIAN PAUNCEFOTE; that since this important question should be the subject of a thorough discussion, the committee will no doubt consider it preferable to begin with a discussion of the second title of the Russian draft concerning international arbitration. This view having been approved, the PRESIDENT reads Article 7 in the following language:

#### ARTICLE 7

With regard to those controversies concerning questions of law, and especially with regard to those concerning the interpretation or application of treaties in force, arbitration is recognized by the signatory Powers as being the most effective and at the same time the most equitable means for the friendly settlement of these disputes.

Upon the motion of Mr. Asser, the words "treaties in force" are replaced by these words: "international conventions."

Upon the motion of Mr. Lammasch, the word "friendly" is stricken out.

The entire article thus modified is adopted.

#### ARTICLE 8

The contracting Powers consequently agree to have recourse to arbitration involving questions of the character above mentioned, so far as they do not concern the vital interests or national honor of the litigant Powers.

Mr. Asser calls attention, without insisting upon the point, to the fact that the phrase "*vital interests or national honor*" is a new one and asks whether it might not be made more definite.

<sup>1</sup> Hall of the Truce. Present: His Excellency Mr. STAAL, *president of the Conference*; their Excellencies Count NIGRA, Sir JULIAN PAUNCEFOTE, *honorary presidents of the Third Commission*; Messrs. ASSER, Baron d'ESTOURNELLES DE CONSTANT, HOLLS, LAMMASCH, MARTENS, ODIER, Doctor ZORN, *members of the committee of examination*.

<sup>2</sup> See annexes 1 and 9.

Dr. Zorn requests that this phraseology be retained; he attaches to it the greatest importance and to his mind it forms an essential guaranty, a *sine qua non* of the adhesion of his Government to the decisions of the Conference. Although he is not able as yet to give an opinion upon the question as to whether his Government will accept the principle of the institution of a permanent tribunal of arbitration and obligatory arbitration, it is certain so far as it is concerned, that such acceptance will in no case be subordinated to the adoption of the reservation in Article 8. Dr. ZORN is supported in his opinion by the fact that the American proposition agrees with the text of the Russian draft.

Mr. Martens, replying to Mr. ASSER, recognizes that the text of Article 8 is in fact new, but he fears that it will not be possible to find a better.

[11] Mr. Odier, under instructions from his Government, asks to have an entry made in the minutes showing that he should be obliged to request an addition to the words "*vital interests and national honor*" of a reference to the Constitution of the country,—but if it is understood that the words written into the draft of these articles comprehend, *a fortiori*, the national constitution, he is able to declare himself as in accord with the proposed text.

The committee notes upon its records Mr. ODIER's declaration.

Article 8 is accepted without modifications.

#### ARTICLE 9

Each State remains the sole judge of whether this or that case should be submitted to arbitration, excepting those enumerated in the following article, in which cases the signatory Powers (to the present document) consider arbitration as obligatory upon them.

Adopted, omitting the words "to the present document."

#### ARTICLE 10

Upon the ratification of the present document by all the signatory Powers, arbitration will be obligatory in the following cases, so far as they do not concern the vital interests nor national honor of the contracting States:

I. In case of differences or disputes relating to pecuniary damages suffered by a State or its nationals, as a consequence of illegal actions or negligence on the part of another State or its nationals.

II. In case of disagreement relating to the interpretation or application of the treaties and conventions mentioned below:

1. Treaties and conventions relating to the posts and telegraphs, railroads, and also those bearing upon the protection of submarine telegraph cables; regulations concerning methods to prevent collisions of vessels on the high seas; conventions relating to the navigation of international rivers and interoceanic canals.

2. Conventions concerning the protection of literary and artistic property as well as industrial property (patents, trade-marks, and trade-names); conventions relating to money and measures; conventions relating to sanitation and veterinary surgery, and for the prevention of phylloxera.

3. Conventions relating to inheritance, exchange of prisoners, and reciprocal assistance in the administration of justice.

4. Conventions for marking boundaries, so far as they concern purely technical and non-political questions.

The preliminary paragraph is adopted, except for the words "between them" which are added after the word "obligatory" (second line), upon the motion of Mr. ASSER.



Section 1. Mr. **Asser** calls attention to the fact that the last words of this paragraph "or its nationals" give rise to an excessive interpretation because they apply even to suits between individuals.

Mr. **Martens** replies that these words imply only a case where a Government takes up the cause for its nationals.

His Excellency Mr. **Staal** proposes the addition of these words: "so far as they are not within the jurisdiction of the local authorities."

The **President** proposes to postpone the examination and editing of this last sentence.

Mr. **Asser**, while approving the text proposed by his Excellency Mr. **STAAL**, suggests the following: "in so far as the judicial power of the latter State is without authority to determine these disputes."

His Excellency Sir **Julian Pauncefote** proposes to close the text with these words: "to pecuniary damages," and to strike out what follows.

Paragraph 1 is adopted unanimously with this omission.

Section II, paragraph 1.

Mr. **Holls** requests the omission of the last sentence of paragraph 1: his Government could not agree to submit to obligatory arbitration "conventions relating to the navigation of international rivers and interoceanic canals."

Mr. **Asser** lays stress upon the fact that it would be to their interest to retain this provision with regard to rivers.

Mr. **Holls** does not dispute this, but however desirable it may be to submit these cases to arbitration, it is very important not to put anything into the decisions of the committee which might provoke formal resistance on the part of a State, and this would certainly be the case so far as the United States is concerned.

Mr. **Martens** calls attention to the fact that the Government of the United States might be satisfied with invoking the reservation in the preliminary paragraph.

Dr. **Zorn** supports the opinion of Mr. **HOLLS**, although the question of inter-[12] national canals is not of as serious interest to Germany as it is to the United States.

The committee decides that in view of the objection formulated and insisted upon by Mr. **HOLLS**, the last sentence of the paragraph shall be omitted subject to further consideration.

Chevalier **Descamps** asks whether the words "commercial treaties and consular conventions" may not be added to the list.

Mr. **Martens** is of the opinion that it is not desirable to extend the list in paragraph 1, especially in view of the fact that the first paragraph of Article II gives full power to do this in the future.

Dr. **Zorn** shares Mr. **MARTENS'** views, as does also Mr. **Lammasch**. This question is therefore postponed.

Baron **d'Estournelles** asks that this question as to commercial treaties be postponed; the French delegation is awaiting instructions on this subject.

His Excellency Count **Nigra** declares that the Italian Government has fully decided to propose the insertion of a clause providing for arbitration in all of its commercial treaties.

It is decided to adopt provisionally paragraph 1 of Section II in this form: "*Treaties and conventions relating to the posts, telegraphs, and telephones* (addi-

tion proposed by Mr. **ASSER**), *railroads, and also those bearing upon the protection of submarine telegraph cables, regulations concerning methods to prevent collisions of vessels on the seas.* (The word "*high*" omitted at the suggestion of his Excellency Count **NIGRA**.)

Adopted.

Paragraph 2 of Section II.

Chevalier **Descamps**, his Excellency Count **Nigra**, Baron d'Estournelles, in connection with the words "conventions relating to sanitation and veterinary surgery and for the prevention of phylloxera" suggest several modifications, the principle of which is adopted, and the secretaries will take charge of drafting the text.

Mr. **Holls** proposes the omission of the word "money": he cannot adopt the principle of obligatory arbitration as to this serious question.

Mr. **Martens** remarks that it would be very regrettable to reduce too seriously the cases for obligatory arbitration by striking out too many items.

Chevalier **Descamps** proposes to replace the words "conventions relating to measures" by the words "conventions relating to the system of weights and measures."

Adopted.

Returning to the proposition of Mr. **Holls**, the **President** asks the opinion of the committee.

Since the opinion of the delegate of the United States seems to be unchangeable, it is concluded to strike out the word "money," subject to further revision.

Mr. **Asser**, seconded by Mr. **Odier**, proposes the addition of a special paragraph regarding the Geneva Convention.— Referred to the committee.

Paragraph 3 of Section II.

Motion is made to replace the word "cartel" by "extradition."

Adopted.

Messrs. **Martens** and **Asser** are asked if they will act together in modifying the form of this paragraph to agree with the principles of private international law. Upon the motion of Baron d'ESTOURNELLES, Mr. **Renault** is asked to act with them.

Adopted.

His Excellency Count **Nigra** proposes the following addition to paragraph 3 of Section II: "Conventions relative to the reciprocal free assistance to the indigent sick."

Adopted.

Paragraph 4 of Section II.

This will read "conventions for settling boundaries" instead of "conventions for marking boundaries."

All of Article 10, except for the modifications and reservations formulated above, is provisionally adopted. It is also understood that it will be the subject of a further discussion when all of the members of the committee shall have received necessary instructions from their Governments.

#### ARTICLE 11

The enumeration of the cases mentioned in the above article may be completed by subsequent agreements between the signatory Powers of the present Act.

Besides, each of them may enter into a special agreement with another Power, with a

view to making arbitration obligatory in the above cases before general ratification, as well as to extend the scope thereof to all cases which the State may deem it possible to submit to arbitration.

Paragraph 1 is adopted without comment.

Paragraph 2 is adopted with the reservation that changes in phraseology will be passed upon by the secretaries of the committee as decided before.

[13]

#### ARTICLE 12

In all other cases of international disputes, not mentioned in the above articles, arbitration, while certainly very desirable and recommended by the present Act, is only voluntary; that is to say, it cannot be resorted to except upon the suggestion of one of the parties in litigation, made of its own accord and with the express consent and full agreement of the other party or parties.

Adopted with the following modification: Article 12 takes the place of Article 11, and Article 11 becomes Article 12.

After a general exchange of views, the committee, at the suggestion of the PRESIDENT, decides that having examined cases of arbitration, it will study the question of a court—including the various plans hitherto presented concerning the question of a permanent tribunal—then that of procedure.

Mr. Asser, alluding to a remark by his Excellency Sir JULIAN PAUNCEFOTE, presents the following proposal:

The award is binding only on the parties. If there is a question as to the interpretation of the convention concluded by a larger number of States than those between which the dispute has arisen, the latter shall notify to the other signatory States the *compromis* they have signed and each of the signatory States shall be entitled to intervene in the arbitration suit. If one or more of these States avail themselves of this right, the interpretation of the Convention contained in the award shall be equally binding upon them.

He intends to call the attention of the committee to this amendment from this time on.

Order of business of the committee: Meeting, Wednesday, June 7, at 2 o'clock, in the Hall of the Truce:

1. Postponed draft of Article 10.
2. Discussion of the question of permanent tribunal of arbitration.

The meeting is adjourned.

## FIFTH MEETING

JUNE 7, 1899<sup>1</sup>

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Mr. Léon Bourgeois presiding.

The minutes of the last meeting are read and approved.

### Examination upon First Reading of the Russian Draft Regarding "International Arbitration"<sup>2</sup>

Before beginning the discussion of the question of the permanent tribunal of arbitration, the PRESIDENT recognizes Mr. Asser who is ready to submit to the committee the draft of Article 10, prepared by him in company with several other members of the committee and Mr. RENAULT:

Arbitration will be obligatory between the signatory Powers in the following cases, so far as they do not concern the vital interests or national honor of these Powers.

I. In case of differences or disputes relating to pecuniary damages.

[14] II. In case of differences or disputes touching the interpretation or application of the conventions mentioned below:

1. Conventions relating to posts, telegraphs, and telephones;
2. Conventions concerning the protection of submarine telegraph cables;
3. Conventions concerning transportation by railroad;
4. Conventions and regulations concerning methods intended to prevent collisions of vessels at sea;
5. Conventions concerning aid for the sick and wounded in time of war;
6. Conventions concerning the protection of literary and artistic works, and industrial property (patents, trade-marks and trade names);
7. Conventions concerning the system of weights and measures;
8. Conventions concerning reciprocal free assistance to the indigent sick;
9. Conventions relating to sanitation; conventions concerning epizooty and phylloxera;
10. Conventions concerning civil procedure;
11. Conventions of extradition;
12. Conventions for settling boundaries so far as they concern purely technical and non-political questions.

After this reading the President consults the committee as to the text of Article 10, paragraph by paragraph.

Preliminary paragraph. A general discussion regarding the omission of the

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<sup>2</sup> Annex 1.

initial clause "upon the ratification of the present document by all the signatory Powers," and Messrs. LAMMASCH, NIGRA, DESCAMPS, etc., take part therein.

This question is reserved until the text of the transitory article applicable to the entire act shall be agreed upon, as that article will necessarily be drafted by the Conference.

Subject to this reservation the preliminary paragraph is adopted.

Section I. Count NIGRA remarks that the word "pecuniary" does not seem satisfactory to him. A general discussion takes place regarding the interpretation of the word "damages" which raises several entirely distinct questions.

1. A question of principle: that is whether a State which claims to have been injured has a right to damages. Will arbitration be obligatory both as to the principle of the claim itself and the *responsibility* of the Government concerned?

2. The principle of responsibility being admitted, is there any reason for inquiring whether arbitration should be obligatory as to the amount of the indemnity to be paid?

3. In the latter case should not arbitration cease to be obligatory if the claim is above a certain sum?

Mr. Lammasch proposes to insert the following restriction: "*If these damages are not the direct result of an act of the central authority.*"

The question of adding this clause is put to vote.

Messrs. ASSER, DESCAMPS, and LAMMASCH voted in favor of it; the other members voted against it.

The President then consults the committee:

(1) as to whether it shall be agreed that obligatory arbitration may apply to the question of responsibility.

Messrs. ASSER, DESCAMPS, NIGRA, and ODIER voted aye.

Messrs. BOURGEOIS, HOLLS, LAMMASCH, Sir JULIAN PAUNCEFOTE, STAAL, and ZORN voted no.

(2) upon the application of obligatory arbitration to the determination of the amount of the indemnity — the principle being first admitted.

The committee unanimously replies aye.

(3) Finally, shall the amount of the indemnity be limited to a certain maximum sum?

Messrs. ZORN, HOLLS, and Sir JULIAN PAUNCEFOTE replied aye.

All other members replied no. Save for formal modifications the committee adopts the following text for Section I of Article 10:

In case of differences or disputes regarding the determination of the amount of pecuniary indemnities, when the principle of indemnity is already recognized by the Parties:

The President reads Section II. Paragraphs 1, 2, 3, 4 are adopted except for the omission of the word "telegraphic" in paragraph 2.

Doctor ZORN proposes the omission of paragraph 5, "conventions concerning aid for the sick and wounded in time of war."

He thinks this clause would lead to dangers and insurmountable difficulties, and would even subject the operations of war to obligatory arbitration.

Messrs. Lammasch, Martens, Sir Julian Pauncefote endorse this view: [15] belligerents could not subject themselves to obligatory arbitration regarding the interpretation of the Geneva Convention, while a war was in progress.

The President recognizes the seriousness of the difficulties pointed out, but

thinks however that it would be regrettable to see this clause disappear entirely. It may be for the interests of the belligerents themselves to leave to a third party the interpretation of certain provisions in the Convention, it being admitted that their respective situations may not permit them to reach an agreement which would nevertheless be desirable from the point of view of humanity.

His Excellency Count **Nigra** shares this opinion.

Mr. **Zorn** insists upon his point.

Mr. **Martens** thinks too that the interpretation of this clause will give rise to inextricable difficulties, because there is not a single war wherein the application of the Geneva Convention does not give rise to the most virulent attacks by both parties.

Mr. **Odier** is of this opinion and thinks that the question deserves close study. Later, under a separate heading the Commission might seek the sanction that the Geneva Convention lacks. It will be better too to put paragraph 5 aside since it contemplates a state of war, while all the other paragraphs refer to a time of peace.

After this exchange of remarks, and while recognizing the usefulness of a future examination of the general question regarding the sanction of the Geneva Convention — a question which does not seem within the jurisdiction of the committee — it is voted to omit paragraph 5.

Paragraphs 6, 7, 8, 9, and 10 are adopted. After the words "concerning epizooty" in paragraph 9 will be added "and preventive measures against phylloxera and other agricultural epidemics."

Regarding Article 11 (conventions of extradition), Mr. **Odier** says that it seems to him difficult to adopt it, at least without explanations.

Mr. **Holls** states that he understood this paragraph to mean that everything relating to resort to the local courts in individual cases may not be submitted to obligatory arbitration.

It relates only to the "interpretation of the conventions" as has been indicated at the beginning of Section II.

Subject to this reservation paragraph 11 is adopted.

The close of paragraph 12 will be redrafted as follows: "so far as they *involve* purely technical and non-political questions."

Upon the motion of Mr. **ASSER**, Section I will be included not at the beginning but at the end of Article 10.

The **President** makes the following comment regarding international rivers and interoceanic canals: These matters, he says, are especially of an international character, and it would be interesting to see the principle of arbitration become general so far as they are concerned.

Especially where we are concerned with these conventions which involve the interests, commerce, pacific activity of a great number of nations, the interpretation and settlement of difficulties should be submitted to arbitration, that is to say, the interest of each State should be made subordinate to the interest of all.

Chevalier **Descamps** asks leave to make a similar statement concerning "commercial treaties" which have also been excluded from the cases of obligatory arbitration.

Mr. **Holls** would be very much disposed to ask the advice of his Government upon this subject.

The **President**, after having ascertained that there were no other objections

to the text of Article 10, consults the committee upon the statements presented by the Third Commission at the session of June 5.<sup>1</sup>

1. Chevalier DESCAMPS is commissioned to make a report upon the statement of Count DE MACEDO concerning the substitution of the word "nations" for the word "them" in Article 1 of the Russian draft.

2. The word "reached" (*toucher*) will be omitted, and "when circumstances permit" will be substituted for "when circumstances allow."

3. As for the observation of Mr. D'ORNELLAS, the committee adopts the following text for Section III of Article 8 (HOLLS' proposition):

The contending States cease from all direct communication on the subject of the dispute which is regarded as referred exclusively to the mediating Powers.

4. At the request of Mr. ASSER the word *friendly* is omitted from Article 6, and the close of that article will consequently read as follows: "*have strictly the character of advice and not binding force.*"

The President states that it is too late to begin the discussion to-day of the different plans for the establishment of a permanent tribunal of arbitration. This discussion will therefore be postponed to the next meeting.

His Excellency Mr. Staal — after recalling the conditions under which he, [16] as well as the American delegation, presented a proposition concerning the tribunal of arbitration — accepts, as does also Mr. HOLLS, the plan of his Excellency Sir JULIAN PAUNCEFOTE as a basis of discussion.

The committee decides to adjust its order of business accordingly, and fixes its next meeting for Friday, June 9, at 3 o'clock in the afternoon.

The meeting adjourns.

<sup>1</sup> See the minutes of that meeting.

## SIXTH MEETING

JUNE 9, 1899 <sup>1</sup>

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Mr. **Léon Bourgeois** presiding.

The minutes of the last meeting are read and approved.

In the course of the reading of the minutes Mr. **Léon Bourgeois** is desirous of stating that it was understood that the committee reserved the right to a re-examination of the text of Article 10, the French delegation having a number of observations to present regarding that article.

This declaration of Mr. **LÉON BOURGEOIS** is noted upon the minutes.

### General Discussion Regarding the Principle of a "Permanent Tribunal of Arbitration"

The order of business calls for the discussion of the plans for the institution of a permanent tribunal of arbitration.

While desiring as president to observe the strictest impartiality during the course of the discussion of this important question, Mr. **Léon Bourgeois** nevertheless has imposed upon him the duty of expressing the opinion of the French delegation; he believes that the way to reconcile these two duties is to make the following general declaration at this time which will reserve to him thereafter entire freedom of action in presiding over the committee:

After having acquainted itself with the various plans for the establishment of a permanent international institution for the purpose of making the practice of arbitration more general, the French delegation believes that these various plans — notably the two plans put forth by the Russian delegation and the British delegation — are so uniform in principle and purpose as to serve as a basis for the discussions of the Conference. The French delegation does not therefore think it necessary for it to present a plan of its own. But now at the beginning of the discussion in the committee the delegation desires to point out the general ideas which will guide it during this debate, to fix the points upon which it is in agreement in principle with the authors of the two plans, and finally to point out certain propositions which it thinks might happily be used to complete the proposed plan and to make its application more easy.

By establishing the voluntary scheme of recourse — not only to a permanent tribunal but also to any system of arbitration, except in the case espe-

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cially provided for in Article 10, and by expressly excluding also "all cases where the vital interests or national honor of States would be involved"—the drafts submitted for our examination seemed to have met the first objections which might have been raised by the most legitimate scruples of national sentiment. It is important that no appearance of moral coercion should be brought to influence the decisions of a State when its dignity, its security, its independence might seem to it to be involved.

It is in the same spirit of fundamental prudence and with the same respect [17] for national sentiment that the principle of permanent tenure of office by the judges has not been included in both drafts. It is impossible in fact to avoid recognizing the difficulty in the present political condition of the world of forming a tribunal in advance composed of a given number of judges representing the different countries and seated permanently to try case after case.

This tribunal would in fact give to the parties not *arbitrators*, respectively chosen by themselves with the case in view and invested with a sort of personal warrant of office by an expression of national confidence, but *judges* in the private law sense, previously named without the free choice of the parties. A permanent court, however impartial the members might be, would run the risk of assuming in the eyes of universal public opinion the character of State representatives; the Governments, believing that it was subject to political influence or to currents of opinion, would not become accustomed to come to it as an entirely disinterested court.

Freedom of recourse to the arbitration court and freedom in the choice of arbitrators seems to us, as it did to the authors of these drafts, the essential principle to the success of the cause to which we are unanimous in desiring to render useful services.

Under this double guaranty, we do not hesitate to support the idea of the permanent *institution*, always accessible and charged with applying rules and following the procedure established between the Powers represented at the Conference at The Hague.

We also accept the establishment of the International Bureau, which should be established to give, as it were, continuity, and serving as a chancellery, clerk's office, and archives of the arbitral tribunal. We believe that it is particularly useful that it should be continuous in its service, not only for the purpose of preserving at one common point the intercourse between the nations, and for the purpose of rendering more certain the unity of procedure and, later on, that of jurisprudence, but also for the purpose of reminding incessantly the spirit of all people by a conspicuous and respected sign, of the superior idea of right and of humanity, which the invitation of His Majesty the Emperor of Russia calls upon all civilized States to follow in common up to the point of realization.

The French delegation at the same time believes that it is possible to invest this permanent institution with an even more efficacious rôle. It is of the opinion that the Bureau might be invested with an international mandate, strictly limited, giving it the power of initiative, and facilitating in most cases the recourse of Powers to arbitration.

In case there should develop between two or more of the signatory States one of the differences recognized by the convention as being a proper subject for arbitration, the permanent Bureau should have the duty of reminding the

litigating parties of the articles of this Convention, having for its object the right or the obligation to have recourse, by consent in such a case, to arbitration; it would therefore offer its services to act as an intermediary between them, in putting into motion the procedure of arbitration, and opening unto them access to its jurisdiction.

It is often a legitimate prejudice and an elevated sentiment which may prevent two nations from coming to a pacific arrangement. In the present state of public opinion, whichever of the two Governments first requested arbitration might fear having its initiative considered in its own country as an exhibition of weakness, and not as bearing witness to its entire confidence in its good right.

In giving to the permanent Bureau a particular duty of initiative, we believe this apprehension would be forestalled. It is the recognition of an analogous difficulty that has led the Third Commission not to hesitate, in cases even more serious and more general, to recognize the right of neutrals to *offer* their mediation, and in order to encourage them in the exercise of this right, the Commission has declared that their intervention cannot be considered as an unfriendly act. *A fortiori*, in the special cases of arbitral procedure to which this present Convention has reference, it is possible to give to the permanent Bureau a precise duty of initiative. It will be charged with reminding the parties of those articles of this international Convention, which would seem to the Bureau to cover the difference between them, and it would ask them, therefore, whether they would consent, under conditions foreseen by themselves, to arbitral procedure—in other words, simply to carry out their own engagements. To a question thus asked, the answer will be easy, and the scruple on the score of dignity which might otherwise prevent such recourse, will disappear. In order to put in motion one of the mighty machines by which modern science is transforming the world, it is sufficient simply to push a finger at the point of contact: still, it is necessary that some one should be charged with the duty of making this simple movement.

The French delegation believes that the institution to which such international mandate may be confided, will play in history a rôle which will be nobly useful.

His Excellency Sir **Julian Pauncefote** reads the following statement:

Before entering upon the extremely interesting question which is to engage our attention to-day, I wish to take occasion to express my thanks to my colleagues from Russia and America who have kindly consented that the [18] plan for a permanent international tribunal of arbitration which I have had the honor to introduce in the Commission should be the basis of our deliberations. In the projects which they have themselves introduced, improvements of my own may be found, and the committee will surely appreciate their value as that of the other amendments which no doubt will be introduced. I wish also to thank the first delegate of France for the declaration which he has just read, and in which he has informed the committee that he also was willing to take my plan as the basis of the discussion, and at the same time I thank the other members of the committee who have done me the honor of expressing themselves to the same effect. I am persuaded that in view of the exceptional talents which are to be found in this committee, we shall attain a result worthy of the mandate so nobly confided to the Conference by His Imperial Majesty the Emperor of Russia.

The President opens the general discussion upon the question of the permanent tribunal of arbitration.

Chevalier Descamps has the floor: The institution of a permanent tribunal of arbitration responds to the juristic consciences of civilized peoples, to the progress achieved in national life, to the modern development of international litigation, and to the need which compels States in our days to seek a more accessible justice in a less precarious peace.

It can be a powerful instrument in strengthening devotion to law throughout the world.

And it is a fact of capital importance that three projects of this kind have been presented by three great Powers. These projects are diverse in character, but it seems possible to harmonize them in a manner which will accomplish all the results immediately attainable.

The establishment of permanent arbitral jurisdictions is by no means an innovation without precedent in international law. The Convention of Berne of October 14, 1890, provides for the establishment of a free tribunal of arbitration, to which the German delegation, at the very first Conference in 1878, wanted to confide most important attributes. Other offices of a permanent juridical nature are still in operation in the law of nations. The establishment of the permanent tribunal of arbitration presents no insurmountable difficulties, and it may easily be the most important factor in the international problem before the Conference of The Hague.

The difficulties which the realization of the magnanimous views of the Emperor of Russia has encountered in other fields are another reason for us to urge forward the organization of mediation and arbitration. We must develop and consolidate the organic institutions of peace. There is on this point a general expectancy in every land, and the Conference cannot, without serious disadvantages, disappoint it.

The proportions which we shall give to this work which we are about to undertake will be, without doubt, modest; but the future will develop whatever fertility this work has for the welfare of the nations and for the progress of humanity.

As for the delegates to this Conference it will be, without doubt, one of the greatest joys of their lives to have cooperated in the achievement of this great result,—the fraternal approach of the nations and the stability of general peace.

After this general introduction, Mr. DESCAMPS adds that several improvements might be made in the plans for the arbitral tribunal by borrowing certain provisions from the draft prepared by the Interparliamentary Conference of Brussels.

He reserves to himself the right of calling attention, during the course of the deliberations, to those of these provisions which might be profitably adopted with a view of giving a stronger unity to the new international organism without encroaching upon the sovereignty of States.

Dr. Zorn has listened with the greatest attention and with profound emotion to the preceding declarations; he recognizes to the fullest extent the solemnity of this hour, when the representatives of the greatest civilized Powers are called upon to pronounce judgment upon one of the gravest problems which could be presented to them; he desires to express the sincere hope that the day will come when the noble wish of the Czar may be accomplished in its entirety,

and when conflicts between States may be regulated, at least in the great majority of cases, in so far as they concern neither vital interests nor national honor, by a permanent international court. But, he adds, filled though I am, personally, with this hope, I cannot, I must not, surrender myself to illusions; and such is, I am sure, the opinion of my Government also. It must be recognized that the proposition now proposed and submitted to the judgment of the committee is but a generous project; it cannot be realized without bearing with it great risks and even great dangers which it is simple prudence to recognize. Would it not be better to wait the results of greater preliminary experience upon this subject?

If these experiences prove successful, and if they realize the hopes reposed [19] in them, the German Government will not hesitate to cooperate to that end, by accepting the experiment of arbitration having far greater scope than anything which has been in practice up to this day. But it cannot possibly agree to the organization of the permanent tribunal before having the preliminary benefit of satisfactory experience with *occasional* arbitrations.

In this situation, continues Dr. ZORN, notwithstanding my intense desire to assist with all my might in bringing the work of this committee to a successful conclusion, I regret to be compelled to move that Article 13 of the original Russian project be made the basis of further discussion instead of the plans for the permanent tribunal, inasmuch as this plan accurately represents the views of the Imperial German Government upon the subject.

The **President** opens the discussion upon this preliminary proposal of Dr. ZORN.

Mr. **Asser** recognizes that it would certainly be useful to have experience, but according to him this experience has already been had, in the occasional arbitrations which have heretofore occurred. What was left to try was precisely the plans now proposed, for they all implied the establishment of a court which should be entirely voluntary. It seems to him that the conclusion which the honorable Dr. ZORN has arrived at need not be quite so absolute, and that without receding from the opinion which he has just stated, in a manner which has deeply impressed the committee, he might still postpone further opposing the establishment of the permanent tribunal of arbitration, and might consent to look upon it, according to the expression of his Excellency Count NIGRA, as a "temporary permanent tribunal."

Dr. **Zorn** was not unmindful of the validity of Mr. **ASSER's** argument, but he raised another objection. There was obviously a great difference between an occasional arbitration and the institution of a tribunal permanently charged with exercising the rôle of an arbitrator according to a code of procedure and certain rules determined in advance. Besides, Dr. **ZORN** wishes to remind the committee that the Russian Government has modified its first project. The German Government had accepted the original Russian project and no other, as the basis of the work of the Conference. He could therefore not to-day accept this experimental establishment of a *temporary* "permanent tribunal" even provisionally:

1. Because such an establishment has not, according to his view, been fore-shadowed in the initial program of the Russian Government;
2. Because practically it was very probable that a provisional permanent tribunal could not be long in becoming definitely and actually permanent.

Under these circumstances Dr. **ZORN** insists upon the preceding observations.

His Excellency Count **Nigra** appeals directly to the spirit of conciliation of Dr. **ZORN**, and in a brief speech he calls attention to the consequences of a negative decision, upon a question which interests all civilized humanity to so great a degree. The impatience with which public opinion awaits the results of our labors has become so great that it would be dangerous to disappoint them entirely, by rejecting the idea of a *permanent tribunal*. If to all these aspirations the Conference returned a curt *non possumus*, the dissatisfaction and disappointment would be tremendous.

In such a case the Conference would incur most grave responsibilities before history, before the people represented here, and before the Emperor of Russia.

In conclusion, his Excellency Count **NIGRA** earnestly requests the German delegate not to refuse categorically to go on with the discussion, but to refer the question once more to his Government.

Chevalier **Descamps** supports the remarks just made by his Excellency Count **NIGRA**.

Dr. **Zorn** responds that he recognizes the force of these remarks to their fullest extent, and that he would therefore not abstain from cooperating further with the work of the committee in the direction of the permanent tribunal, although it must be clearly understood that he could by no means bind his Government.

This declaration of Dr. **ZORN** is entered upon the minutes, it being well understood that it reserves his entire liberty of action and ultimate decision.

The preliminary question raised by Dr. **ZORN** being thus settled, the committee continues the general discussion.

Mr. **Martens** desires, in his turn, to make the following explanations:

When the Russian Government formulated its first proposals concerning arbitration, it doubtless had in view the general outlines of the project which was distributed, but this project was nothing but an outline, and necessarily required many amendments and additions, which the Russian Government only completed by specifying. He has always thought, without going into the details of the question, that this was the time and place to provide for the procedure and for the establishment of arbitral tribunals, always giving to the Powers in litigation complete liberty in choice of arbitrators. The Russian Government considered that its duty was complete when it suggested to the Powers the result of its reflections without wishing to impose its opinion upon any one.

[20] There were provisions in all of the projects under discussion which naturally would give rise to the fears expressed by Dr. **ZORN**, but these were misunderstandings which it ought to be easy to dispose of during the discussion which was sure to arise. Might it not be possible, for example, to adopt at the head of all the provisions about the permanent tribunal an article recognizing the absolute liberty of the parties in litigation to make their own free choice?

It might be expressed as follows:

In the case of a conflict between the signatory or adhering Powers they shall decide whether the controversy is of a nature to be brought before a tribunal of arbitration, constituted according to the following articles, or whether it is to be decided by an arbitrator or a special tribunal of arbitration.

His Excellency Sir **Julian Pauncefote** is of the opinion that his project makes an entire and express reservation of the liberty of the parties.

His Excellency Count **Nigra** asks if the beginning of Article 1 cannot be worded as follows:

With the object of facilitating an immediate recourse to arbitration for international differences which could not be settled by diplomacy, the signatory Powers undertake to organize, etc.

Chevalier **Descamps** thinks that the heading alone of the articles relating to arbitration might satisfy all the scruples expressed above if it were thus worded: *free tribunal of arbitration*.

The **President** considers that as the committee are agreed in declaring that the permanent tribunal of arbitration should not be obligatory upon any one, and as we are all in accord upon this principle, it might be best to reserve the question as to whether it should be expressed in a preliminary article or otherwise.

The committee being of the same opinion as the **PRESIDENT** upon this point, Mr. **Odier** wishes to adhere expressly to the declaration previously made by Mr. **DESCAMPS** and Count **NIGRA** in favor of the establishment of the permanent tribunal of arbitration: "More than one hope, more than one expectation, of arbitration has dawned on the world; and popular opinion has the conviction that in this direction, above all, important steps will be taken by the Conference. No one can deny, in fact, that we are able at this moment to take a new and decisive step in the path of progress. Shall we draw back, or reduce to insignificant proportions the importance of the innovation expected of us? If so, we should arouse a universal disappointment, the responsibility for which would press heavily upon us and our Governments. The important innovation which we can present to humanity at large is the establishment of a permanent institution which will always be in evidence before the eyes of the world, a tangible result, so to speak, of the progress which had been made."

Although recognizing the force of the objections raised by Dr. **ZORN**, Mr. **ODIER** cordially joins in the wish expressed by Count **NIGRA** that the German delegate would once more refer the question to his Government.

Mr. **Lammasch** also wishes to express his opinion and his reservations. Notwithstanding the fact that the circular of Count **MOURAVIEFF** had made no mention whatever as to the possibility of the establishment of the permanent tribunal, he had not opposed the acceptance by the committee of the project of Lord **PAUNCEFOTE** as the basis of the discussion, but he was not empowered to act so far as to declare that Austria-Hungary was ready to indorse the establishment of a permanent tribunal. This institution might, indeed, be established in many ways, some of which might be objectionable, according to the further decisions of the Conference. Professor **LAMMASCH** concludes by saying that he accepted the project of Lord **PAUNCEFOTE** as the basis of discussion, in order not to delay or hinder the very important work of the committee and that he was ready to take part in the discussion with all possible good-will, but under the express reserve that his participation in the debate could have no other character than that of a preliminary examination of the question, and that it could not for the present in any way commit his Government.

This remark and reservation of Mr. **LAMMASCH** is duly entered upon the minutes.

Mr. **Holls** makes a declaration of which the following is a summary:

I have listened with the greatest attention to the important exchange of

opinion which has just taken place between the representatives of different great European States. It has seemed proper to me, representing, as it were, a new Power, that precedence in the discussion should naturally be given to the delegates of the older countries. This is the first occasion upon which the United States of America takes part under circumstances so momentous in the deliberations of the States of Europe, and having heard, with profound interest, the views of the great European Powers, I consider it my duty to my Government, as well as to the committee, to express upon this important subject the views of the Government of the United States with the utmost frankness.

I join most sincerely and cordially in requests which have been addressed to the honorable delegate of the German Empire.

[21] In no part of the world has public opinion so clearly and unmistakably expressed its adherence to the noble sentiments of His Majesty the Emperor of Russia, as in America. Nowhere do more sincere wishes, hopes, and prayers ascend to heaven for the success of this Conference. We have received hundreds of expressions of sympathy and support, not only from the United States, but from the entire American continent; and these manifestations come from organizations of the highest standing and the widest influence.

In consequence, we, the members of this Conference, are bound, so to speak, by a most solemn moral obligation, incurred, not between the Governments, but between the peoples of the civilized world. Let me ask the honorable members of this committee to approach the question before us in a practical spirit, such as is generally attributed to us Americans; let us observe the true state of public opinion. Public opinion, all over the world, is not only eagerly hoping for our success, but it should be added that it has become uneasy and anxious about it. By reason of interests, vital to it, which we have to discuss, it fears that the results of this Conference will turn out purely unsatisfactory, platonic. And it should be recognized that these fears are based upon a recent experience. A conference profoundly interesting to mankind, namely, upon the protection of the interests of labor, met at Berlin upon the noble and generous initiative of the German Emperor. What was the result? Resolutions of a purely platonic character.

Public opinion expects more this time; it will not pardon a new rebuff, and the very hopes which are now concentrated upon us and our work will be the measure of the disappointment which would follow our failure. Without doubt Dr. ZORN is correct in recalling the difference existing between occasional arbitration and that contemplated in the initial Russian draft; but from a practical view-point—the view-point of efficient and critical public opinion all over the world—I venture to say that we shall have done nothing whatever if we separate without having established a permanent tribunal of arbitration.

Record is made of Mr. HOLLS' declaration, which is warmly supported by Mr. ASSER, Sir JULIAN PAUNCEFOTE, and Count NIGRA.

The general discussion is closed. The committee begins the reading of the articles.

**Examination, Upon Its First Reading, of the Plan for the "Permanent Tribunal of Arbitration" by His Excellency Sir Julian Pauncefote<sup>1</sup>**  
(Continued)

A general exchange of views takes place regarding Article 1 of Sir JULIAN PAUNCEFOTE's draft.

The committee shares the view of Mr. BOURGEOIS regarding the words *tribunal* or *court* the use of which seems premature. We do not know yet exactly what we shall do, and until some change is decided upon we shall use the broader term *institution*.

Count **Nigra**, referring to Article 1, calls attention to the inconvenience of using the word *States* sometimes, and again the word *Power*. He proposes that we agree upon a uniform terminology; the word "State" seems most suitable.

Chevalier **Descamps** expresses a contrary view.

Concurring with Sir JULIAN PAUNCEFOTE, Mr. **Martens** expresses the opinion that we might divide Article 1 into two parts:

1 and 1 *bis*. The first concerning organization, the second concerning jurisdiction.

The second paragraph would be begun with the words: "This tribunal should be competent," and each of the two paragraphs forming a separate article would appear as follows in the draft:

#### ARTICLE 1

With the object of facilitating an immediate recourse to arbitration for international differences which might not have been settled by diplomacy, the signatory Powers undertake to organize in the manner hereinafter mentioned a permanent tribunal of arbitration, accessible at all times, and which shall be governed by the code of arbitration inserted in this Convention, unless otherwise stipulated by the parties in dispute.<sup>2</sup>

#### ARTICLE 1 *bis*

This tribunal shall be competent for all arbitration cases whether obligatory or voluntary, unless the parties in dispute agree to institute a special tribunal.

These two articles are adopted subject to further revision as to form.

#### ARTICLE 2

The **President** reads Article 2 of Sir JULIAN PAUNCEFOTE's draft. A discussion takes place as to the form of paragraph 1 of this article.

<sup>1</sup> Annex 2, B.

<sup>2</sup> [Sir JULIAN PAUNCEFOTE's project was drafted in English. This was translated into French and the French text was presented to the committee and Commission for consideration. When the final convention was drafted a considerable part of the original French text remained intact, and was adopted. When an English translation of the convention was made by both Great Britain and the United States, the original English text of Sir JULIAN PAUNCEFOTE seems to have been entirely disregarded, and the English translation of the final convention differs considerably from Sir JULIAN PAUNCEFOTE's draft even where the French still remains the same as the French translation first presented to the committee. The English translation here used is made to conform to the translation officially adopted by the United States Government.]



[22] The committee, upon being consulted by the **PRESIDENT**, unanimously accepts the designation of The Hague as the seat of the permanent tribunal.

Mr. **Asser** is authorized to declare that the Netherland Government is highly honored by this selection by the committee and by the unanimity of its members in agreeing thereto.

The words "for that purpose" are stricken out.

Chevalier **Descamps** is asked to investigate and obtain a final list of the powers and duties of the bureau.

Article 2 is therefore adopted for the time being in the following form:

#### ARTICLE 2

A permanent central bureau shall be established at The Hague where the archives of the tribunal shall be preserved, and its official business shall be transacted. A permanent secretary, an archivist and a suitable staff shall be appointed who shall reside on the spot.

The bureau will be the channel for communications relative to the meetings of the tribunal at the request of the contesting parties.<sup>1</sup>

#### ARTICLE 3

Mr. **Holls** proposes to insert the following amendment:

When possible these persons shall be nominated by the majority of the members of the highest court then existing in each of the adhering States, and, in any case, they shall be selected by reason of their ability to decide, according to the spirit of the law, all questions over which they may have jurisdiction.

In support of this amendment Mr. **HOLLS** says that especially in American Republics public opinion will not permit a selection of judges to be accompanied by a suspicion of political influence. Each of these republics possesses a supreme court which would seem best qualified to guide the President in the choice of members of the future arbitration tribunal. The judges of the highest court are in a situation to know and to estimate the worth of judges and of members of courts of their country, and they can have no other interest than that of choosing the most competent and the most trustworthy representatives. It would be the same in nearly, if not all, of the continental states. The purpose of the amendment is not to take away from the sovereign or from the head of the executive branch of the Government the power of nomination, but to gain the support of public opinion which would have greater confidence in the proposed tribunal if it were understood that the highest court of each country would participate in the designation of its members.

Mr. **HOLLS** declares that his instructions direct him to ask for a vote on this question.

In view of the opposition to the proposition of Mr. **HOLLS** manifested by all the other members of the committee, it is decided that the report shall mention the spirit of impartiality which should govern the choice and nomination of the judges.

After an exchange of views by Messrs. **BOURGEOIS**, Sir **JULIAN PAUNCEFOTE**, Count **NIGRA**, Baron **d'ESTOURNELLES** and **DESCAMPS**, the committee thinks

<sup>1</sup> See minutes following.

the word "lawyer" (*jurisconsulte*) is too narrow in the ordinary acceptance of the term.

Chevalier **Descamps** proposes that two or more Powers might agree upon the designation of two members in common as is provided in the draft of the Interparliamentary Conference.

The **President** reads the first paragraph of Article 3, as it was adopted at the first reading, the text of which follows below.

As for the second paragraph, Chevalier **Descamps** proposes an addition limiting the duration of the term of a member of the tribunal to six years, unless it is renewed. It is well, he says, to avoid life appointments. The committee agrees with this view, and, subject to certain modifications which Mr. **DESCAMPS** wishes to make in the phraseology, adopts provisionally the following complete text of Article 3:

Within the three months following the ratification of the present act, each signatory Power shall select two persons of known competency in international law, of the highest moral reputation, and disposed to accept the duties of arbitrator.

The persons thus selected shall be inscribed as members of the tribunal in a list which shall be notified to all the signatory Powers by the central bureau.

Two or more Powers may agree on the selection in common of two members. The same person can be selected by different Powers.

The members of the tribunal are appointed for a period of six years; their appointment can be renewed.

In case of the death or retirement of a member of the tribunal, the same rules shall be followed for new appointments.<sup>1</sup>

[23] It is understood that the report of the present session shall remain strictly confidential until some future decision to the contrary.

The **PRESIDENT** places upon the order of the business for the next meeting Article 4 *et seq.* of the **PAUNCEFOTE** draft. That meeting will take place Monday, June 12, at 2:30 o'clock, Hall of the Truce.

The meeting adjourns.

<sup>1</sup> See the minutes of the following meeting.

## SEVENTH MEETING

JUNE 12, 1899<sup>1</sup>

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Mr. **Léon Bourgeois** presiding.

The minutes of the last meeting are read and approved. At the suggestion of his Excellency Count **Nigra** the committee desires to express its thanks to Baron d'ESTOURNELLES DE CONSTANT for the preparation of these minutes.

Mr. **Holls** declares in the name of the delegation of the United States of America that although that delegation participates in the committee in working out a plan for the permanent tribunal upon the *basis of the proposal* of Sir JULIAN PAUNCEFOTE, the American delegation does not intend of course to give up its preference for its own plan. It therefore reserves the right to present its plan, if it seems proper, either to the Third Commission or to a plenary session of the Conference, as an amendment to the report of the committee.

This declaration by Mr. **Holls** is noted upon the records of the meeting.

### Examination upon Its First Reading of the Plan for the "Permanent Tribunal of Arbitration" by His Excellency Sir Julian Pauncefote (Continued)<sup>2</sup>

Chevalier **Descamps**, who was commissioned to submit to the committee a new version of Article 2 of the plan of Sir JULIAN PAUNCEFOTE, reads the following text which is adopted:

#### ARTICLE 2

A central bureau is established at The Hague, through the efforts and under the supreme supervision of the Government of the Netherlands. This bureau is placed under the direction of a resident secretary general. It serves as registry for the arbitration tribunal. It is the channel for the communications relative to the meetings of the tribunal. It has custody of the archives, and conducts all the administrative business.

Upon the suggestion of Mr. **Holls**, it is understood that certain points in Article 2 are reserved for discussion later in connection with Article 6.

Article 3 is read and adopted in the following form:

<sup>1</sup> Hall of the Truce. Present: His Excellency Mr. **STAAL**, *president of the Conference*; their Excellencies Count **NIGRA**, Sir **JULIAN PAUNCEFOTE**, *honorary presidents of the Third Commission*; Chevalier **DESCAMPS**, *president and reporter*; Messrs. **ASSER**, Baron d'ESTOURNELLES DE CONSTANT, **HOLLS**, **LAMMASCH**, **MARTENS**, **ODIER**, Doctor **ZORN**, *members of the committee of examination*.

<sup>2</sup> Annex 2, B.

## ARTICLE 3

Within the three months following the ratification of the present act, each signatory Power shall select two persons of known competency in international law, of the highest moral reputation, and disposed to accept the duties of arbitrator. The persons thus selected shall be inscribed as members of the tribunal, in a list which shall be notified to all the signatory Powers by the central bureau.

Two or more States may agree on the selection in common of two members. The same person can be selected by different States. The members of the tribunal are appointed for a period of six years. Their appointment can be renewed.

[24] In case of the death or retirement of a member of the tribunal his place will be filled according to the same rules.

## ARTICLE 4

The **President** reads Article 4.

As indicated by Chevalier DESCAMPS, Article 4 will be followed by Article 4 *bis* concerning the fixing of the meeting place of the tribunal.

The committee passes to the discussion of Article 4.

Mr. **Asser** asks leave to present a question to Sir JULIAN PAUNCEFOTE in order to learn how the third arbitrator will be designated.

Mr. **ASSER** fears that if Sir JULIAN PAUNCEFOTE's text is adopted, a party might easily avoid arbitration, even obligatory arbitration. Article 4 in fact furnishes him with the means; with the aid of this article could not one party indefinitely hold up the formation of the tribunal and consequently stop everything?

His Excellency Sir **Julian Pauncefote** replies that the new tribunal will be governed either by the parties themselves, where there is a *compromis*, or, in the absence of a *compromis*, by the code of procedure which will be added to the act.

His Excellency Count **Nigra** reads as an example Article 3 of the Treaty of permanent arbitration concluded between Italy and the Argentine Republic.<sup>1</sup>

This article meets exactly the objection raised by Mr. **ASSER**.

Mr. **Léon Bourgeois** recognizes, as does Mr. **ASSER**, that there is a defect in Article 4, and he reserves the right to return to the question.

Chevalier **Descamps** proposes a draft beginning with these words: "The litigant parties choose one or more arbitrators from this list." This draft no doubt is better fitted to the formation of a more complete organization than that contemplated, that is, to the constitution of a court, but Chevalier **DESCAMPS** believes nevertheless that it may be suggested to the committee.

Mr. **Asser** proposes as an alternative, in case an agreement regarding the choice of the third arbitrator could not be reached in any other manner, to resort to the drawing of lots.

Mr. **Holls** declares that it is not permissible in any case to impose upon one of the parties a third arbitrator which it would not desire to have.

Mr. **Lammasch** is of the opinion that the following might be agreed upon; if the States cannot agree in the choice of a third arbitrator, the choice will be left to the heads of the neutral States, that is, the King of the Belgians, the Grand Duke of Luxemburg, and the President of the Swiss Confederation.

Mr. **Holls** believes that the United States would not accept this exclusively European arrangement.

<sup>1</sup> Treaty of July 23, 1898.

Mr. **Martens** believes that the Russian plan has provided for the difficulty.

Mr. **Asser** thinks that these opinions are in fact sufficient in cases where good-will exists, but not in a contrary case.

The **President** calls attention to the fact that the question of the third arbitrator is not peculiar to the plan for the permanent tribunal. We might therefore return to it when discussing generally the code of arbitration. This suggestion is adopted by the committee.

Mr. **Martens** requests that the following sentence be omitted: "They shall also have the power to add to their number other arbitrators than those whose names appear on the list, . . ." for this power to add names would take away from the list a great deal of its authority. If recourse may indifferently be had, now to members who are on the list, and again to others, the list would quickly fall into disuse.

Mr. **Holls** supports this point of view.

Chevalier **Descamps** states that this omission would be regrettable from a practical point of view and in the adaptation of the tribunal to disputes of various kinds. In certain respects we could consider the supplementary arbitrators as advisers or necessary technical delegates.

Mr. **Martens** replies that in that case it is useless to talk of them, because the ordinary tribunals may have recourse to technical investigators and to experts without changing their composition for that purpose.

The **President** is of the opinion that we might also, for the same reasons as stated above, postpone the discussion of the question asked by Mr. **Martens** until the discussion of the code of arbitration.

[25] He puts to vote the two paragraphs of Article 4 which are successively adopted in the following form under the numbers 4 and 4 *bis*.

#### ARTICLE 4

The signatory Powers which desire to have recourse to the tribunal for the settlement of differences which have arisen between them, shall notify such desire to the secretary general of the bureau who shall furnish them without delay the list of the members of the tribunal. They will select from this list such number of arbitrators as may be agreed upon in the *compromis*. In default of provisions upon this point (in the *compromis*), arbitrators shall be designated from this list according to the rules fixed by Articles . . . of the code of arbitration. The arbitrators thus chosen shall form the tribunal for this arbitration.

They shall meet on the date fixed by the parties in dispute.

#### ARTICLE 4 *bis*

The tribunal shall sit ordinarily at The Hague, but it shall have the power to sit elsewhere and to change its meeting place according to circumstances and its convenience or that of the parties in dispute.

Returning to the discussion of Article 4, Mr. **Holls** proposes the following amendment: "*In case the court is composed of but three judges none of them can be a native, subject or citizen of the parties in dispute.*"

Mr. **Asser** seconds this proposal.

His Excellency Count **Nigra** reads Article 3 of the treaty already referred to between Italy and the Argentine Republic; it is drawn up along the lines of Mr. **Holls'** amendment.

Mr. **Martens** is of the opinion that the amendment deserves the attention of the committee, and that it is proper to reject it expressly: because the plan which the Conference will prepare will have more chances of acceptance by the interested Powers, if each of them finds itself authorized to have a representative on the tribunal.

Mr. **Odier** replies that, according to Mr. **Holls**, it is only a question of the case where there are but three arbitrators. Now, in that case, if each of the arbitrators is of the nationality of the parties they will act as advocates rather than as judges, and there will in reality be only a single arbitrator.

Mr. **Holls** supports this view, and adds that such an organization would make impossible all compromise and any spirit of conciliation; neither of the two arbitrators being either willing or able, under certain conditions, to make concessions.

Chevalier **Descamps** notes the delicacy of the question. Considering the tendencies of States, which do not wish to renounce their sovereignty, and which seek the maximum guaranty possible, it is very probable, as Mr. **Martens** thinks, that each of them will insist absolutely upon having a judge of its own on the tribunal. Chevalier **Descamps** is therefore of the opinion that in the interest of the very cause which we are here to promote, it would be wise to make this concession, which is also in accordance, in a great measure, with precedents in the matter of the formation of arbitration tribunals. It should not be forgotten that international society is a society of *coordination* among sovereign States, and we should not model its institutions too closely after the principles adopted in societies of *subordination* as in the different national organizations.

Mr. **Holls** admits this point of view in the case of tribunals of more than three members, but not when there are only three, because it results in reality, as Mr. **Odier** says, in reducing the tribunal to a single judge.

Mr. **Léon Bourgeois** remarks that the designation of a judge by each interested party would, in his view, be not only a wise concession but a sort of natural and legitimate transition from diplomatic communication to judicial argument; he proposes therefore that since these considerations are not peculiar to the permanent tribunal, this discussion might be postponed, as in the case of the preceding questions, to the time when the examination of the articles of the code of arbitration is undertaken.

Dr. **Zorn** asks permission to call attention to the fact that the reservation of Mr. **Holls** seems to him to apply to a civil suit, since no one may be the judge of his own case, but in the case of an international court it is an entirely different thing: in his view it is necessary that one of the representatives of the States in dispute be admitted to the tribunal even if there are only three members; the umpire will decide.

Dr. **Zorn** consequently supports the views of Messrs. **Martens**, **Léon Bourgeois** and Chevalier **Descamps**.

It is therefore understood that the question is reserved until the discussion of the code of arbitration.

Mr. **Holls** is anxious to declare that the principal reason for his proposition is his Government's keen desire that the tribunal of arbitration shall not be too small.

#### ARTICLE 5

The President reads Article 5.

Mr. **Holls** asks whether the time is not come to insert the following amendment, commencing with the words:

Any difference, whatever it may be, between the signatory Powers may, by common agreement, be submitted by the interested nations to the judgment of this international tribunal, and in every case where the tribunal has jurisdiction the interested parties shall bind themselves, in resorting to it, to accept its award.

Chevalier **Descamps** calls attention to the fact that Article 24 of the code of procedure contemplates this provision. The question is whether there is any reason to leave this provision in the code.

His Excellency Sir **Julian Pauncefote** calls attention to the fact that Section 2 of the appendix to Article 13 of the Russian draft also very particularly contemplates this provision.

After these remarks, Mr. **Holls** agrees to reserve the question.

Article 5 is adopted in the following form:

Any State, although not signatory to the present act, may have recourse to the tribunal on the terms prescribed in the regulations.

#### ARTICLE 6

The **President** reads Article 6.

His Excellency Count **Nigra** asks that the amendment of the Russian Government to which he agrees be read.

The **President** announces the order of business for the next meeting which will take place Friday, June 16, at 2:00 o'clock, Hall of the Truce:

1. Continuation of the discussion of Article 6 of the proposition of Sir **JULIAN PAUNCEFOTE** — of the proposition of Mr. **DESCAMPS** — and of the Russian amendments;

2. Article 7.

The meeting adjourns.

## EIGHTH MEETING

JUNE 21, 1899 <sup>1</sup>

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Chevalier Descamps presiding.

The order of business calls for the continuation of the discussion of Article 6 of the PAUNCEFOTE plan.

### Examination, upon Its First Reading, of the Plan for the "Permanent Tribunal of Arbitration" by His Excellency Sir Julian Pauncfote (Continued) <sup>2</sup>

#### ARTICLE 6 (*Continuation of the discussion*)

Sir **Julian Pauncfote** proposes to substitute for the text which he set forth to the committee the following draft which, it seems to him, should be approved in its general lines:

A permanent council composed of the representatives of the signatory Powers residing at The Hague, and of the Netherland Minister for Foreign Affairs shall be instituted in this town as soon as possible after the ratification of the present Convention. This council shall be commissioned to establish and organize a central bureau which will be under its direction [27] and control. It shall proceed to the installation of the tribunal; it shall examine from time to time the rules necessary for the proper operation of the central bureau. It will also settle all questions which may arise with regard to the operations of the tribunal or it will refer them to the signatory Powers. It will have absolute power over the appointment, suspension, or dismissal of the officers and employees of the central bureau. It will fix their payments and salaries, it will control the general expenditure. At a meeting duly summoned the presence of five members will be sufficient to render valid the discussion, and the decisions will be taken by a majority of votes.

The **President** opens the discussion of this new draft.

He recalls that the idea of resort to the diplomatic corps of a country, which is the seat of an international institution, has already been suggested at the Conference of Brussels of 1889-1890 regarding the suppression of the African slave trade.

<sup>1</sup> Hall of the Truce. Present: His Excellency Mr. STAAL, *president of the Conference*; Jonkheer VAN KARNEREK, *vice president of the Conference*; their Excellencies Count NIGRA, Sir JULIAN PAUNCEFOTE, *honorary presidents of the Third Commission*; Messrs. ASSER, Baron d'ESTOURNELLES DE CONSTANT, HOLLS, LAMMASCH, ODIER, Doctor ZORN, *members of the committee of examination*. Present at the meeting: Mr. BASILY.

<sup>2</sup> Annex 2, B.



Mr. **Asser** cites another precedent along the same line: the Convention of 1888 concerning the free use of the Suez Canal. As to the principle itself of the proposal of Sir JULIAN PAUNCEFOTE, Mr. **ASSER** does not think he can speak definitely upon the matter without instructions from his Government; however, it is worth being examined with a great deal of interest. Mr. **ASSER** thinks that instead of saying "representatives . . . *residing* at The Hague," we should designate them as the "representatives . . . *accredited* to The Hague."

His Excellency Mr. **Staal** sees only advantages to be gained in supporting the proposition of Sir JULIAN PAUNCEFOTE.

Dr. **Zorn** believes that this provision would facilitate acceptance of the Final Act by the Governments. He desires, in any case, that the council be composed exclusively of the diplomatic representatives not only accredited but residing at The Hague.

Mr. **d'Estournelles** attaches special importance to the word "resident" and the committee shares this view.

Mr. **Asser** proposes as a preliminary precaution to provide in any case that the permanent council shall begin by drawing up its rules of procedure in order that we shall be very sure that its meetings will be regularly organized and constituted.

Mr. **Holls** endorses this proposition.

His Excellency Count **Nigra** and all the members of the committee adhere to the principle of the propositions as contained in the new draft of Article 6 by Sir JULIAN PAUNCEFOTE, subject of course to the reservation that there should be a further examination and that the Governments represented in the committee shall express their approval thereof.

The committee passes to the examination of the new draft of Article 6 of the PAUNCEFOTE plan.

The **President** reads the first sentence of the new Article 6. It is adopted.

As to the second sentence, Mr. **Asser** is of the opinion that it would be necessary to fix a period for the installation of the central bureau.

After discussion the committee declines to specify any period.

The third, fourth, fifth, and sixth sentences of the new Article 6 are adopted in the form given below.

Finally, at the suggestion of Mr. **ASSER**, it is decided to add a seventh sentence containing the stipulation already provided for in the Russian plan.

The complete text of Article 6 is finally adopted upon the first reading in the following form:

A permanent council composed of the diplomatic representatives of the high contracting Parties residing at The Hague, and of the Netherland Minister for Foreign Affairs who shall be the president thereof, shall be instituted in this town as soon as possible after the ratification of the present act. This council will be charged with the establishment and organization of the central bureau which will be under its direction and control. It will notify to the Powers the constitution of the tribunal and will provide for the installation of the latter. It will settle its rules of procedure as well as the rules necessary for the proper operation of the central bureau. It will also settle all questions which may arise with regard to the operations of the tribunal or it will refer them to the contracting Powers. It will have absolute powers over the appointment, suspension or dismissal of the officials and employees of the central bureau.

It will fix their payments and salaries and control the general expenditure.

At a meeting duly summoned the presence of five members will be sufficient to render the discussions valid, and the decisions will be taken by a majority of votes. The council will render annually to the contracting parties an account of its activities as well as of the labors and expenses of the bureau.

#### ARTICLE 7

The **President** reads Article 7 of Sir JULIAN PAUNCEFOTE's plan.

After a general discussion vote on this article is reserved; the members of the committee are to solicit the opinions of their colleagues of the Third Commission upon this subject.

[28] The order of business calls for the discussion of Articles 14, 15, 16, 17 and 18 of the Russian plan for "International commissions of inquiry."

### Examination, upon Its First Reading, of the Russian Plan Relating to "International Commissions of Inquiry"<sup>1</sup>

#### ARTICLE 14

The **President** reads Article 14.

Mr. **Lammasch** does not fail to recognize the value of this institution of international commissions of inquiry; they will certainly be very beneficial, but to declare them obligatory is to go very far indeed. For we are here making an innovation in the law of nations. The duties which this Article 14 imposes upon States are serious, especially if we compare with this Article 14 the obligations formally provided in Article 16 which implies in a way an abnegation of national sovereignty.

Mr. **LAMMASCH** proposes therefore to make the provisions of Article 14 not obligatory but voluntary.

The following words could be written in line 5 of Article 14: "*the signatory Powers deem it expedient that the interested Governments agree, etc.,*" and use "*for*" instead of "*in*" at the beginning of the article.

Mr. **Asser** observes that the institution of international commissions of inquiry should be extended to all differences relating to *questions of fact*, and should not therefore be limited to the ascertainment of *local circumstances*.

Mr. **Holls** is of the same opinion as Mr. **LAMMASCH**. However, he believes that the Governments should not be contented with providing for these commissions, but they should *recommend* that the parties have recourse thereto.

Dr. **Zorn** shares the opinion of Messrs. **LAMMASCH** and **HOLLS**.

The committee having declared itself in favor of this view, the following text is adopted upon the first reading, and subject to the approval of the interested Governments:

For cases which may arise between the signatory States where differences of opinion with regard to local circumstances have given rise to a dispute of an international character which cannot be settled through the ordinary diplomatic channels, but wherein neither the honor nor the vital interests of these States is involved, the signatory States have agreed to

<sup>1</sup> Annex 1.

recommend to the interested Governments the constitution of an international commission of inquiry in order to ascertain the circumstances forming the basis of the disagreement and to elucidate all the facts of the case by means of an impartial and conscientious investigation on the spot.

### ARTICLE 15

Mr. **Holls** fears that this provision setting up two members on each side separated by a single president, will run the risk of serious disagreement. He is of the opinion that in general the two commissioners chosen on each side will agree. However that may be a single president will not have sufficient authority to make his opinion accepted in the two opposing camps.

This is why he proposes to increase the number of neutral commissioners and to set the number at three at least. The opinion of these three neutrals would be imposed very differently from that of a single man. The vote of the president, dividing the four commissioners, forming two groups, would not have sufficient authority. Three votes cast on the same side would produce more of an impression upon public opinion.

Mr. **Basily** observes that the proposition of Mr. **Holls** tends to form a very important commission for difficulties which will often be of an insignificant character: he cites, for example, those which occur so frequently along the frontier of two countries.

His Excellency Sir **Julian Pauncfote** is of the opinion that it is proper to leave to the parties themselves the duty of settling these details.

Dr. **Zorn** proposes the addition of the words "unless otherwise stipulated."

Mr. **Lammasch** believes that this question will come up again when Articles 4 and 5 of the code of arbitration are discussed.

The committee adopts Article 15 with this reservation after having decided however to add to the article these words "unless otherwise stipulated" and to modify the last sentence in accordance with the suggestions of Mr. **LAMMASCH**.

The draft of Article 15 adopted at the first reading therefore is as follows:

- [29] Unless otherwise stipulated, the international commissions are formed as follows: each interested Government names two members and the four members together choose a fifth member, who is also the president of the commission. In case of equal vote for the selection of the president the procedure contained in Articles 4 and 5 of the code of arbitration will be followed.

### ARTICLE 16

A general discussion takes place with regard to the form of this article.

Messrs. **HOLLS**, Baron **D'ESTOURNELLES** and Dr. **ZORN** point out the dangers of this draft: who indeed will be judge of what shall be the necessary means and facilities? It would seem difficult and dangerous to subscribe to such an obligation because it may reduce a State to the alternative of having to furnish or to refuse information relating to its own security.

Chevalier **Descamps** proposes to add these words to this article: "furnish to the latter as fully as they may think possible."

He points out an analogous provision in Article 81 of the General Act of the Conference of Brussels in 1890.

This proposal is adopted.

The draft of Article 16 then undergoes several modifications in detail and becomes the following:

The Governments which have appointed the commissioners furnish to the latter so far as they may think possible all means and facilities necessary for the exact and complete understanding of the facts in question.

Article 17 is adopted in the following form :

#### ARTICLE 17

The international commission of inquiry communicates its report to the interested Governments.

#### ARTICLE 18

Mr. **Asser** considers this article, together with Articles 15, 16, and 17, as valuable when Article 14 provided for an obligation ; but the situation is no longer the same since we have just decided that this article should have a voluntary character.

Dr. **Zorn** is also of this opinion when looking at the matter from the juridical view-point, but we must not forget that these articles possess another very important characteristic, *i. e.*, they act as a warning. Bearing that in mind, it is not necessary, as Mr. **ASSER** points out, to enter too much into details, since all the provisions of this chapter have only a voluntary character and consequently leave to the interested parties entire freedom to modify them at their pleasure.

Mr. **d'Estournelles** proposes in any case until future decisions to the contrary to strike out the last clause of Article 18. It is useless to provide for and to reserve explicitly the right to resort to war in an act of the Peace Conference.

The committee shares this view, Article 18 will consequently end with the words "mediation and arbitration." The text adopted therefore becomes the following:

The report of the commission of inquiry has in no way the character of an award ; it leaves the disputing Governments entire power either to conclude a settlement in a friendly way upon the basis of the above-mentioned report, or to resort to mediation and arbitration.

The next session will be held on Friday, June 23, at 2 o'clock.

The order of business is the discussion of arbitral procedure.

The meeting adjourns.

## NINTH MEETING

JUNE 23, 1899<sup>1</sup>

Chevalier **Descamps** presiding.

The minutes of the last meeting are read and approved.

Mr. **Martens** gives to the committee with his respects ten copies of a code drawn up by the British and Venezuelan Governments for the purposes of an arbitration over which he had the honor to preside in Paris.

The interesting feature about this document is that it bears a great similarity to the draft which we are to discuss to-day.

The committee thanks Mr. **MARTENS** for this communication.

With regard to the last meeting at which he was not present, due to his absence in Paris, Mr. **MARTENS** desires to make some remarks which may be summarized as follows:

Article 14 of the Russian plan: International commissions of inquiry are not an innovation; they have already proved that they may be of service when a controversy breaks out between two States both acting in *good faith*, for example when a boundary matter arises between them. Opinion is aroused all the more if the question is unexpected and if opinion is uninformed because it is ignorant of the origin and the real cause of the dispute. It is at the mercy of momentary impressions and there are many chances that, favored by this ignorance, minds will be irritated and the dispute will become a bitter one; that is why we desire to provide for the contingency of the commission having for its purpose: first and above all, to seek and make known the truth as to the cause of the affair, and as to the materiality of the facts. Such is the principal rôle of the commission; it is named to make a report, and not to make decisions which may in any way bind the parties. But while it works for the purposes of making a report, time is gained, and that is the second object which we have in view. Spirits will become calmer and the dispute will cease to be so acute.

Now this double and important practical result cannot be obtained except on one condition, and that is that the interested Governments will agree to bind themselves reciprocally to name these commissions, with the reservation of course that vital questions and the honor of the States in dispute will not be affected thereby.

If we limit ourselves to the mere utterance of a platonic *vau*, to a recommendation that these commissions be appointed, we shall miss the goal at which we are aiming, we shall have merely expressed our intention once again; the appointments should therefore be obligatory.

<sup>1</sup> Hall of the Truce. Present: His Excellency Mr. **STAAL**, *president of the Conference*; Jonkheer **VAN KARNEBEEK**, *vice president of the Conference*; their Excellencies Count **NIGRA**, Sir **JULIAN PAUNCEFOTE**, *honorary presidents of the Third Commission*; Messrs. **ASSER**, **BARON D'ESTOURNELLES DE CONSTANT**, **HOLLS**, **LAMMASCH**, **ODIER**, **MARTENS**, **DOCTOR ZORN**, *members of the committee of examination*. Assisted at the meeting: Mr. **BASILY**.

The **President** believes that before passing to the order of business, the committee should first express itself with regard to the remarks of Mr. MARTENS. It would seem that this might be taken care of by adopting a compromise term, for example by adding to the original text of Article 14 of the Russian plan these words: "if circumstances allow" after the words "agree to form."

Mr. **Asser** is of this opinion and at the last session he expressed an opinion similar to that of Mr. MARTENS.

Mr. **Lammasch** sees no objection to joining personally in the compromise proposal of Chevalier DESCAMPS but the text of Article 14 regarding "commissions of inquiry" seems too vague to him; this article would gain by borrowing a little more precision, for example from Article 10 of the Russian draft. Could you not point out for instance some of the cases where the formation of commissions would be obligatory?

[31] Dr. **Zorn** accepts the terms proposed by Chevalier DESCAMPS, "so far as circumstances allow," but he asks if we might not reserve the draft of Article 14 until after we have decided upon the form of Article 10, because of the connection existing between the two articles which he too has noted.

Chevalier **Descamps** believes that this is only an apparent connection; these two Articles 10 and 14 contemplate two very different states of facts.

After a general discussion the committee reaches an agreement to revise and redraft as follows the text of Article 14, adopted at the last meeting: after the words "*agree to form*" will be added these "*so far as circumstances allow*."

As to the last sentence of Article 18 and the remark of Baron d'ESTOURNELLES, at the conclusion of which this sentence was stricken out, Mr. **Martens** does not insist that it be retained, but he desires to call attention to the fact that in the mind of the originator of the plan the subject was not *war* but simply measures of *reprisal* or *retortion*.

This remark of Mr. MARTENS is entered upon the minutes of the meeting.

The order of business calls for the discussion of the code of arbitration.

Before reading its articles, Chevalier **Descamps** thinks he should review the exact scope of the work which it is the duty of the committee to prepare. There are several series of questions to be studied successively, he says, but these questions form a whole which must be properly arranged. Here is the general scheme of the Convention to be drafted:

An initial provision concerning the *maintenance of general peace*.

Then follows a series of provisions relating to *good offices and mediation*.

A group of articles concerning *international commissions of inquiry* forms a third division of the subject matter.

Finally we come to the articles concerning *international arbitration* which it is convenient to arrange under the following three heads:

I. *System of arbitration*.

II. *Permanent Court of Arbitration*.

III. *Arbitral procedure*.

All these provisions have for their purpose the *peaceful settlement of international disputes*, and from this point of view form a first attempt at an organic code of peace.

None of these matters can or should be considered independently of the others: the articles which concern them should without distinction appear in their order and in their place, not in an appendix, but in the very body of the act of the Conference.

As to jurisdiction and procedure, it is well understood that the States will preserve entire liberty to adopt among themselves by common agreement such other jurisdiction or such other procedure as may appear preferable to them, but we must offer them the result of our work and our research, in order to facilitate their task, and, so to speak, to place at their disposal an ever ready means of conciliation. Chevalier DESCAMPS then submits to the committee a new draft of Article 13 which would immediately precede the provisions relating to the code of arbitration.

New draft of Article 13 proposed by Chevalier DESCAMPS:

With a view to facilitating recourse to arbitration and the operation of the system of arbitration, the high contracting Parties have agreed to determine certain points concerning the organization of the arbitral jurisdiction and the procedure to be followed in connection therewith.

The rules thus established do not apply if there are other stipulations between the parties.

### Examination, upon Its First Reading, of the Russian Plan for the "Code of Arbitration"<sup>1</sup>

After having heard the preceding declarations and postponed to a future meeting its vote upon the new text of Article 13, the committee passes to the discussion of the articles of the code of arbitration.

#### ARTICLE 1

The **President** reads Article 1 which should come, according to his view, after Article 13 of the Russian draft.

This Article 1 is adopted subject to the reservation that it shall be examined in the future and with the following modification: the word "States" is substituted for the word "nations" in line 2, and the word "parties" for the word "Governments" in line 3.

[32]

#### ARTICLE 2

The **President** reads Article 2.

Chevalier **Descamps** will propose at the next meeting a text which he thinks will avoid the confusion which seems to exist between the arbitral clause and the *compromis*.

Mr. **Asser**, supporting the views of Chevalier DESCAMPS upon this point, asks that Article 3 be omitted and inserted later, and that the article which will be proposed by Mr. DESCAMPS be placed among the general provisions at the head of the final act.

Mr. **ASSER** also asks that these words "all of the facts and legal points" be not written into Article 2. Doubtless we should determine the *exact object of the controversy*, that is the facts and the law points submitted to the decision of the arbitrator, but it is going too far to say in advance that all the facts in their *entirety* should be set out, because several may be found which might have been omitted at the beginning and which would come to light later.

Mr. **Lammasch** believes with Mr. **MARTENS** that it is essential to determine as clearly as possible the purpose of the arbitration under the penalty of coming

<sup>1</sup> See annex 1, B.

within the scope of Article 26 which provides for cases of nullity. However, we might do justice to Mr. ASSER's remarks by adding to the words "all the facts" the word "essential."

Mr. HOLLs asks that the words "without appeal" be omitted from Article 2, and that this provision be added: "*every litigant shall have a right to a second hearing.*"

Mr. ASSER and Mr. DESCAMPS believe that we may, strictly speaking, omit the words "without appeal," since they appear later in Article 24.

Mr. MARTENS is not of this opinion. The words "*without appeal*" are indispensable, and should be written into Article 2, the parties being free, of course, to adopt any contrary provision.

The President is of the opinion that the proposition of Mr. HOLLs will find its proper place in Article 24; if it is adopted we might then return to Article 2.

Mr. HOLLs accepts this suggestion.

The questions of repeal and revision will therefore be discussed at the end of the code of arbitration.

Mr. ODIER calls the attention of the committee to a conflict, at least apparent, between Article 2 and Article 16, which authorizes the making of *motions* before the arbitral tribunal in the course of the proceedings. What is meant by "*motions*" concerning matters already under discussion?

If we admit these motions here would we not return to the necessity of fixing in advance all of the facts contemplated by Article 2?

Mr. MARTENS replies that it seems proper to reserve the right to present new facts or questions. After a general discussion this question is postponed until the consideration of Article 16.

We reserve also the adoption of Article 2; Chevalier DESCAMPS will bring a new draft to the next meeting.

### ARTICLE 3

The same action is taken as regards Article 3.

### ARTICLES 4 AND 5

The President reads Articles 4 and 5, which are closely related.

Mr. ASSER thinks that the draft of Section 1 of Article 4 is incomplete. He desires that mention should be made specially of the case where the sovereign is not himself the arbitrator, but agrees to designate an arbitrator.

Mr. MARTENS thinks that it would be advantageous to make two articles out of Article 4 in view of the institution of a permanent tribunal: he suggests therefore the adoption of the following text which would meet the objection of Mr. ASSER:

The interested Governments may entrust the duties of arbitrator to a sovereign or a chief of State of a third Power when the latter agrees thereto. They may also entrust these duties either to a single person chosen by them, or to an arbitral tribunal formed for this purpose, or to the permanent tribunal of arbitration, established by virtue of Article . . .

In the case of the formation of a special tribunal of arbitration the latter should be formed as follows: each contracting party chooses two arbitrators and all the arbitrators together choose the umpire who is *de jure* president of the arbitral tribunal.

In case of equal voting the litigant Governments shall address a third



Power or a third person by common agreement and the latter shall name the umpire.

[33] Chevalier **Descamps** is of the opinion that the code of arbitration cannot enumerate everything, foresee everything: he therefore reserves the right to propose to the committee a more general version which will leave to the interested parties all necessary freedom of action.

After a general discussion the committee postpones its decisions upon the motion of Messrs. **Martens** and **Descamps** as well as upon Section 1 of Article 4.

The committee then passes to the discussion of Section 2 of Article 4.

Mr. **Lammasch** in his turn reserves the right to suggest a new text at the next meeting.

After an exchange of views in which all the members of the committee take part, it is decided that the examination of Articles 4 and 5 shall be postponed like that of the preceding Articles.

#### ARTICLE 6

The **President** reads Article 6. He asks if the text of this article shall not also provide for the retirement of an arbitrator; in that case Article 6 might be redrafted as follows:

The disability or reasonable challenge, even if of but one of the above arbitrators, as well as the refusal to accept the offices of arbitration (or relinquishment) after acceptance, or again the death of an arbitrator already chosen, invalidates the entire *compromis* except in the case where these conditions have been foreseen and provided for in advance by common agreement between the contracting parties.

A member of the committee remarks that the word "disability" is very vague.

Mr. **Asser** thinks that before modifying the text it is proper to discuss the principle thereof. Now to his mind this principle is very much open to question. It would be preferable to authorize the interested State itself to choose a successor in case of need. In this case the *compromis* would remain in force, and that is the essential principle to be established — *i. e.*, that what is favorable to arbitration should be the rule and that which is unfavorable the exception.

Mr. **Martens** does not underestimate the value of Mr. **Asser's** comment, and he is ready to give due consideration thereto. In any case so far as the form of Article 6 is concerned, he believes that we should retain the word "disability" because an arbitrator may, without dying or the relinquishment of his position, become unworthy of the office, ill, insane or unable to fulfill his duties. But as to the objection to the principle brought out by Mr. **Asser**, that in fact presents the following question for solution: should the disability of an arbitrator carry with it the nullification of the *compromis*, or indeed on the contrary shall the *compromis*, so to speak, survive the arbitrator? There are examples of this. Thus in a recent case of arbitration between Italy and Persia the King of Sweden, who had been asked to name an arbitrator, at first selected one of his subjects, then he reversed his decision and named in his place another arbitrator, although this right was not reserved to him in the *compromis*. To my mind he did not have the right to do this, and if he was able to do it without inconvenience it was due solely to the circumstances. Generally speaking, we may say that if one of

the clauses of the *compromis* cannot be executed by reason of the disability of an arbitrator, then it is better that the *compromis* should be rendered invalid. On the contrary when all of the clauses may be executed, Mr. MARTENS is of the opinion that the amendment of Mr. ASSER should be adopted.

Mr. HOLLIS thinks that the *principle* of nullification written into Article 6 should be retained because, he says, we should not be satisfied with words: arbitration is above all a matter of personal confidence in the arbitrators: it is by virtue of this personal confidence that the arbitral commission is formed, and constitutes a real entity. If one person is lacking as arbitrator the *compromis* has no longer any basis; a new one must be made.

Mr. ASSER admits the arguments of Mr. HOLLIS, but the reasoning of the delegate of the United States does not prevent the Government which has manifested its confidence in an arbitrator from transferring this same confidence to another arbitrator, also of its choice. It will often happen that the arbitrators chosen are not young and arbitrations may last a long time. Will it be admitted that the death of an arbitrator on the eve of the delivery of the award will open up everything to discussion again?

Dr. ZORN is of the opinion that the committee might without inconvenience unite in Mr. ASSER's view. Indeed, what is the principal danger which a civilized Government—especially the German Government—may see in the institution of an arbitration? It is the absence of guaranties as to the impartiality of the arbitrators. It goes without saying as a general rule, that all the interested States will name as arbitrators men chosen from among the best, and designated because of the general and undisputed respect for them. But it is no less true that this guaranty of impartiality is of an absolutely moral character, and that it is unique: there is no other. Let us not neglect therefore any precaution for safeguarding it and strengthening it. Bearing this in mind, it is none the less

[34] true, on the other hand, that when two Governments have reached an agreement to form an arbitration there is good reason for preventing a chance occurrence from nullifying the results of their labors. In this respect the proposition of Mr. ASSER is satisfactory since it provides for this occurrence while safeguarding the necessary guaranties of confidence.

Mr. HOLLIS replies that he has no other object in view than to assure to the parties in interest absolutely the maximum of guaranties possible, and it is for the purpose of reserving their rights, their interests and their liberty that he asks for the preservation of Article 6.

His Excellency Sir JULIAN PAUNCEFOTE and His Excellency Count NIGRA support the views presented by Mr. ASSER, and point out to the committee the precedent furnished by Article 4 of the treaty between Italy and Argentina. After a general discussion, and subject to the reservation of further examination, the following French translation is decided upon, which will take the place of the text of Article 6 until further action:

When an arbitrator for any reason cannot assume or continue the duties with which he has been charged, his place shall be filled by following the same procedure which governed his appointment.

The next meeting is set for Monday, June 26, at a quarter of three, Hall of the Truce.

The order of business calls for the continuation of the discussion of the plan for the code of arbitration.

The meeting is adjourned.

# TENTH MEETING

JUNE 26, 1899<sup>1</sup>

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Mr. Léon Bourgeois presiding.

The order of business calls for the continuation of the discussion of the code of arbitration:

## Examination, upon Its First Reading, of the Russian Plan for the "Code of Arbitration" (Continued)<sup>2</sup>

### ARTICLE 7

The President reads Article 7.

His Excellency Sir JULIAN PAUNCEFOTE recalls that in his plan for a permanent tribunal of arbitration Section 2, Article 4, adopted by the committee, already contemplated the provisions regarding the meeting place of the tribunal. Care should be taken not to lose sight of this article and to make its text agree with that of Article 7 now under consideration.

The committee thanks Sir JULIAN PAUNCEFOTE for these observations and decides to insert in the first sentence of Article 7 of the code of arbitration (subject to a future determination of the necessary agreement between the two articles) the following words: "*except in the case provided for in Article 4 relative to the permanent tribunal*" after the words "*the meeting place of the arbitral tribunal.*"

Adopted.

Chevalier Descamps, taking up in his turn the observation of Sir JULIAN PAUNCEFOTE regarding the second sentence of Article 7, proposes to modify it so as to make it agree with the text already adopted in Article 4, above cited, [35] of the plan for the permanent tribunal. He suggests the following version: "*the tribunal shall have the right to meet elsewhere or change its meeting place in case of necessity.*"

After a general discussion the committee adopts the following text for the second sentence of Article 7: "*A change of the meeting place of the tribunal can be decided upon either by a new agreement between the interested Governments or in case of necessity by the tribunal itself.*"

<sup>1</sup> Hall of the Truce. Present: His Excellency Mr. STAAL, *president of the Conference*; Jonkheer van KARNEBEEK, *vice president of the Conference*; their Excellencies Count NIGRA, Sir JULIAN PAUNCEFOTE, *honorary presidents of the Third Commission*; Chevalier DESCAMPS, *president and reporter*; Messrs. ASSER, Baron d'ESTOURNELLES DE CONSTANT, HOLLS, LAMMASCH, MARTENS, ODIER, Dr. ZORN, *members of the committee of examination*. Present at the meeting: Mr BASILY.

<sup>2</sup> See annex 1, B.

## ARTICLE 8

The President reads Article 8.  
Adopted.

## ARTICLE 9

Adopted with this modification:

The word "deliberations," being likely to give rise to misunderstanding, is omitted, (see under Articles 11 and 17 the reason for this omission).

## ARTICLE 10

Chevalier Descamps points out a modification to be made either in Article 10 or Article 24: in fact if we compare Article 10 with Article 24 it is evident that the latter provides for complete arbitral procedure including the award, while Article 10 excludes the latter from the definition given to the word procedure.

The President recognizes the accuracy of this observation: Article 10 in fact contemplates only *instance* while Article 24 covers *all the procedure*. But it is the text of the latter article which would seem to be defective; it would become clear if we substitute the word "*procedure*" in the third line of Article 24 for the words "*all the procedure*."

Chevalier Descamps points out that to his mind the terms "preliminary procedure" and "final procedure" are illegal and incorrect. We shall have to come back to this upon the final revision.

The committee being also of this opinion, it will be considered in connection with Article 24.

As for Article 10, paragraph 1 is adopted; paragraph 2 is modified subject to further examination: "*The former consists in the communication to the members of the tribunal and to the adverse party by the agents of the contracting parties of all acts, printed or written, containing the proofs of the parties upon the questions in dispute.*"

The third paragraph is adopted without modification.

All of Article 10 is adopted.

## ARTICLE 10 bis

The committee decides to introduce after Article 10 an article complementary thereto, drawn up as follows (Article 10 bis): "*Every document produced by one party must be communicated to the other.*"

## ARTICLE 11

The word "deliberations" is replaced by the word "discussions" in paragraph 2, and paragraph 1 is adopted in the following form: "*The discussions before the arbitral tribunal are under the direction of the president.*"

Paragraph 2 is adopted with the following modification: "*Minutes of all of these discussions are drawn up by secretaries appointed by the president of the tribunal; the minutes only have an authentic value.*"

## ARTICLE 12

After a discussion participated in by his Excellency Count Nigra, Messrs. Martens, Holls, Asser, Chevalier Descamps, and Bourgeois, Article 12 is

adopted in the following form: "*Preliminary procedure having been concluded and the discussions having been opened, the arbitration tribunal has the right to refuse all new acts and documents which one of the parties may wish to submit to it without the consent of the other.*"

Adopted.

#### ARTICLE 13

Article 13 is adopted with the following modifications: substitute the word [36] "production" for the word "presentation" in paragraph 2 (4th line) and add to the last line of the same paragraph these words "and it is bound," before the words "make them known."

#### ARTICLE 14

A general discussion arises concerning the text of this article and is participated in especially by Messrs. Chevalier DESCAMPS, HOLLS, LAMMASCH, BOURGEOIS, and MARTENS. The latter, in agreement with Mr. LAMMASCH, believes that this article is of practical importance and that is why it has been adopted almost verbatim by the English and Venezuelan arbitrators.<sup>1</sup> The tribunal may invoke the provisions of this article, as a valuable right not only for seeking information, but also for purposes of control to compel the agents of the parties in a proper case to prove their statements.

The **President** summarizes the discussion by saying that the principle which all of the members of the committee seem to desire to bring out in this article is this: if the agents refuse for one reason or another to produce the proofs which are demanded from them by the other agents, then the tribunal, being unable to coerce them, may, and should *take note* of their refusal. In other words a State cannot be obliged to agree to this proof, but if it refuses to make it, it does so at its own risk and peril. The text of Article 14 therefore completely reserves both the right of the tribunal and the freedom of the parties.

After this exchange of views, the committee decides to substitute "can" for "right," and the draft of Article 14 is adopted upon the first reading.

#### ARTICLE 15

Adopted.

#### ARTICLE 16

After a general discussion and upon motion of Chevalier **Descamps**, the committee adopts the first paragraph of this article with the following modifications, subject to the reservation of a future examination: "*these agents and counsel have also the right to raise before the tribunal objections and points concerning the matter to be discussed.*"

As for paragraph 2 its provisional form will be as follows: "*The decisions of the tribunal on these questions are final and cannot form the subject of discussion.*"

Regarding the provisional character of the draft of Article 16, the committee understands once for all that the same remark applies to all drafts which have been adopted up to the present time, and which will be adopted by it upon the first reading; many articles must necessarily be revised in the final act in order to be made to agree with one another.

<sup>1</sup> See Article 10 of the "Rules of Procedure."

## ARTICLE 17

Adopted with this modification in the second line of paragraph 2: the word "*deliberations*" being erroneously applicable both to discussions and deliberations, will be replaced by the word "*discussions*" and this substitution will be carried out all through the articles where it may be necessary, as has been done in Articles 9 and 11.

## ARTICLE 18

After a general discussion, the committee adopts the following version, reversing the order of the sentences: "*The arbitral tribunal alone is authorized to determine its competency in interpreting the clauses of the compromis, according to the provisions of special treaties which may be invoked in the case, as well as the principles of international law.*"

In the course of the general discussion which preceded the vote upon this Article 18, an interesting exchange of views took place as a result of a remark by Mr. ASSER.

Mr. ASSER regrets that we cannot further extend the powers of the arbitrators in Article 18. In support of his opinion he invokes the precedent of the arbitration between Holland and France regarding Guiana; each of the two interested parties having fixed the line claimed by them, must the arbitrator necessarily declare himself in favor of one or the other of the lines? Or indeed could he not fix a third if he deem it more equitable? Such is the condition which His Majesty the Emperor of Russia imposed before accepting the arbitration which was offered to him. The Emperor insisted upon being free to determine his competency himself, and upon being able not only to adopt the French or Netherland solution, but his own solution — an intermediate solution.

[37] This condition was accepted by the parties in an express declaration on August 28, 1890, which Mr. ASSER communicates to the committee.<sup>1</sup>

Mr. MARTENS makes the following explanation upon this point: His Majesty Emperor Alexander III not desiring in fact to be invested with limited powers, the two parties agreed to give him the freedom which he claimed. However, they were free to refuse this freedom and the Emperor likewise had the right to demand it.

Mr. ASSER wonders whether the convention could not contain a provision along the line which he has just pointed out, reserving to arbitrators the greatest freedom of action.

The President thanks Mr. ASSER for his interesting communication. He recognizes that in practice this freedom may even be of advantage, but it may also be otherwise. That depends upon circumstances. Furthermore, it seems difficult to introduce such a provision into an act as general in character as that which we are preparing. It might rather find its place in the special *compromis* between the parties; the latter should, above all, always remain free to entrust themselves to the decision of the arbitrators, to the extent which they themselves determine. If we take away this freedom we must take care not to run counter to the purpose which we are bound to seek, and instead of leading Governments little by little to the practice of arbitration, turn them away from it; because

<sup>1</sup> Convention of November 29, 1888, between France and the Netherlands concerning their dispute regarding the boundaries of their respective colonies (French Guiana and Surinam).

they will not come to it unless they know exactly where they are going, and unless they feel they are protected from all surprise.

Mr. Asser replies that it is precisely this consideration which made him determine not to put his remarks in the form of a motion. He only asks that a minute of this discussion be made of record.

It was so decided.

#### ARTICLE 19

The President reads Article 19. This article is adopted with the omission from the last sentence of the words "and to pass upon . . . to two parties."

#### ARTICLE 20

Article 20 is adopted with this slight modification: "*pronounce*" should be written instead of "*shall pronounce*."

#### ARTICLE 21

Paragraph 1 is adopted without modification.

In paragraph 2 "*members of the tribunal*" will be written instead of "*members of the tribunal present*."<sup>1</sup>

Paragraph 3 is adopted.

#### ARTICLE 22

(*Should the award state the reasons upon which it is based?*)

Dr. Zorn requests the addition at the end of paragraph 1 of these words: "*must state the reasons on which it is based*."

Mr. Martens recognizes the significance of this proposition. He has on more than one occasion mentioned the advantages that would result from a statement of the reasons upon which the awards of arbitrators are based; especially by this means we would succeed in creating a valuable body of law. But on the other hand he is bound to recognize serious objections which he has met on the part of different arbitrators who are of the highest authority in these matters, and who have called his attention to the fact that in an international conflict arbitrators are not only judges; they are also representatives of their Governments. To require them to state the reasons for their decisions would be to impose upon them one of the most delicate of obligations, and perhaps even to embarrass them seriously, if their judicial consciences do not find themselves in accord with the requirements of their Governments or the sensibilities of public opinion in their countries. It is indeed going far to require an impartial arbitrator to condemn his own government. Must we also require him to justify himself expressly and thereby aggravate this condemnation? If the arbitral decision contains only a few sentences all of the arbitrators without regard to their nationality may sign it. Will the result be the same if this award, accompanied by a statement of the reasons on which it is founded, implies a severe criticism of or casts blame upon, one of the parties? It is clear that the arbitrator of the country blamed will be obliged to abstain from voting, and consequently that the decision will have less authority. That is why, in the very interest of the growth of the principle of arbitration, the Russian Govern-

<sup>1</sup> [The words "of the tribunal" are evidently a misquotation in the French text.]

ment has not gone so far as to provide that arbitral decisions shall be accompanied by a statement of the reasons upon which they are based.

[38] In the face of these remarks Dr. Zorn reserves the right to renew this motion, if there is a reason therefor, upon the second reading.

Chevalier Descamps recognizes the political bearing of the remarks of Mr. MARTENS, but these considerations may be reconciled with the motion of Dr. ZORN. In fact arbitrators have the power to state the reasons for their awards in a few words. They themselves will know very well how to ascertain the form and limits to be observed in this connection. It would be very injurious from the judicial point of view to abandon a statement of the reasons for the award. The obligation to state the reasons is at the same time an essential guaranty to those before the court, and one of the most valuable elements of progress in law.

After this discussion the text of paragraph 1 of Article 22 is adopted subject to the reservation of the amendment by Dr. ZORN, which will be taken up again upon the second reading. In paragraph 2 the words "*in the minority record*" are replaced by the words "*in the minority may record*."

### ARTICLE 23

The word "*solemnly*" is stricken out and the article adopted in the following form: "*The arbitral award is read out at a public sitting of the tribunal in the presence of the agents and counsel of the Governments at variance, or upon their being duly summoned to attend.*"

Dr. Zorn might have some objections to draw up regarding the public character of the meeting; he reserves the right to present them on the second reading.

This reservation by Dr. ZORN is entered on the minutes.

### ARTICLE 24

#### (Question of revision)

The President reads Article 24.

Mr. Holls wonders whether the time is not come to discuss before entering into the examination of this article, the principle of the amendment which he has prepared regarding revision and appeal.<sup>1</sup>

Mr. HOLLIS asks that this provision be expressly made for a rehearing, if the parties desire it, before the same judges, within a period of three months. His Government places considerable emphasis upon this point: in the case of a special arbitration, provision for such a hearing might without doubt be stipulated in the *compromis*; but in case of the organization of the permanent court it would have to be provided for in the general act.

Mr. HOLLIS reserves the right to present this opinion at greater length in writing sometime in the future.

Mr. Asser supports this motion. It would be better, he says, to accept the principle of a rehearing if one of the parties is not satisfied, than to run the risk of having that party refuse to accept arbitration.

Mr. Martens replies that it is necessary to his mind to ascertain whether we are dealing with particular or special tribunals of arbitration or with the permanent tribunal itself. If we are discussing the latter we shall take it up

<sup>1</sup> See the proposition of the American commission, annex No. 7.



when the time comes; if on the contrary we are considering the former we must reserve to Governments absolute freedom and not usurp their individual initiative in the text of the general act. If we ourselves in advance open the way to revision we shall tear down with one hand what we construct with the other: we shall take away from arbitration part of its strength and we shall perpetuate disputes which we would terminate. Consequently, Mr. MARTENS concludes, not only do I not see any use in providing for a revision, but I see danger in so providing. It is indeed sufficient to leave absolute freedom to the parties in this connection. Our own duty is to offer arbitration as a final solution.

Chevalier **Descamps** cites the text adopted by the Institute of International Law following the lines of Mr. HOLLS' motion (Article 13). The question is whether it is necessary to introduce the principle of revision into our draft or simply to reserve this right to be acted upon at the initiative of the parties.

Mr. **Holls** insists upon his observations and asks that the discussion be postponed to a future meeting.

Vote upon Article 24 is therefore reserved.

#### ARTICLE 24 *bis*.

Mr. **Asser** reads the amendment which he proposes to insert after Article 24 under No. 24 *bis*.

The arbitral award is binding only on the parties. If there is a question of interpreting a Convention concluded by a larger number of States than those between which the dispute has arisen, the latter shall notify to the other signatory States the *compromis* which they have signed, and each [39] of the signatory States shall have the right to intervene in the arbitral suit. If one or more of these States avail themselves of this right, the interpretation of the Convention contained in the award will be equally binding for them.

Save for modification of form the committee adopts the principle of this amendment. This article will come after Article 24 until further action.

Mr. **Holls** proposes in his turn an amendment which would be expressed as follows: "after the rendering of the arbitral award any one may have a copy at his expense of the documents relating to the arbitration."<sup>1</sup>

Chevalier **Descamps** believes it is difficult to sanction such a right; especially to this extent. There are a great many arbitral decisions which have not been published, and which the parties have an interest in not publishing. There may be "reasons" stated therein which a State would not wish to, or could not, make known. If the two parties agree to publish nothing would Mr. **Holls'** proposition require them to do so?

Mr. **Holls** reserves this proposal for the second reading.

#### ARTICLE 25

Mr. **Holls** observes that there is no article governing the appointment of judges.

The **President** replies that if the parties form a special arbitration between themselves they themselves will determine this point in their special conventions. If, on the contrary, they have resorted to the permanent tribunal the question will be examined by the committee when it comes back to the organization of this tribunal.

<sup>1</sup> See text of the American proposition, annex 7, paragraph 3.

Article 25 is adopted with the following modification: the word "*one-half*" will be replaced by "*an equal share*," subject to future revision in the matter of form.

## ARTICLE 26

*Question of nullity*

Mr. **Asser** asks whether some power might not be found on which would devolve the duty of declaring the award null, so that so serious a judgment might not be left to arbitrary action or to the initiative of the losing State. If, as he believes, we do not succeed in finding this power, then Mr. **ASSER** is of the opinion that Article 26 should be stricken out.

The **President** believes that Mr. **ASSER**'s observations should call for the closest consideration on the part of the committee.

Chevalier **Descamps** thinks that a great service which a permanent court of arbitration could render would be to act precisely as such a power.

Mr. **Odier** thinks that the draft of this article is subordinated to the question as to whether there will be a permanent court or not.

The **President** does not think it possible to provide for cases of nullity, without knowing at the same time who will be the judge to pass upon these cases. We cannot, on the other hand, think of imposing the decision of the permanent tribunal upon the parties in questions which they do not intend to submit to this jurisdiction.

Chevalier **Descamps** asks that this question of *nullity* which is so serious, be reserved together with that of *revision*.

Paragraph 1 of Article 26 is reserved.

The other two sections of Article 26 will form Article 27.

## ARTICLE 27

The two sections which compose this article are reserved.

His Excellency Sir **Julian Pauncefote** recalls that we have also reserved the question of the number of arbitrators in cases where the dispute concerns more than two States.

Mr. **Lammasch** would be of the opinion that in this case the number of arbitrators for each party should be limited to four.

The **President** declares that the minutes will state this point upon which the members of the committee agree: one of the parties should not in any case have more arbitrators than the other.

Chevalier **Descamps** asks permission before the end of the session to call attention to a special point: could we not authorize the privilege of immunity for the arbitrators since they are members of an international supreme court?

Dr. **Zorn** shares this view and reserves the right to enlarge upon it [40] himself. He thinks that the arbitrators are "diplomatic agents *ad hoc*" and are persons with extraterritorial rights.

The committee thinks that it will be able to discuss this question properly when the time arrives.

The first reading of the articles of the code of arbitration being ended, the committee decides to have a new text of the draft code of arbitration printed and distributed for the second reading, in two columns with the original articles opposite the articles modified by the committee.<sup>1</sup>

<sup>1</sup> See annex 9.

The next meeting will take place on Friday, June 30, at 3 o'clock.

The order of business is as follows:

1. Second reading of the draft code of arbitration;
2. Second reading of the draft of Sir JULIAN PAUNCEFOTE for the permanent tribunal (this draft will also be reprinted in parallel columns).<sup>1</sup>
3. Discussion of Article 10.

The meeting is adjourned.

<sup>1</sup> See annex 9.

# ELEVENTH MEETING

JUNE 30, 1899 <sup>1</sup>

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Mr. Léon Bourgeois presiding.

The minutes of the last meeting are read and adopted.

Chevalier Descamps delivers to each of his colleagues the text which he kindly assumed the burden of arranging and which contains opposite the original proposals the different drafts redrafted by the committee upon first reading concerning the draft of the code of arbitration. This document is divided into three chapters: <sup>2</sup>

1. The system of arbitration and disputes dependent thereon;
2. The permanent tribunal of arbitration;
3. Arbitration procedure. (*It is this last chapter which is going to be discussed upon second reading during the present session.*)

The President thanks Chevalier DESCAMPS for the communication of this interesting piece of work.

The order of business calls for the discussion upon its second reading of the third chapter of this document, that is, of the code of arbitration procedure.

## Examination, upon Its Second Reading, of "the Draft Code of Arbitration Procedure" <sup>2</sup>

### ARTICLE 1

After a general discussion this article is stricken out as being a duplication of Article 13, Chapter I—furthermore Article 13 has been approved and adopted.

### ARTICLE 2

After an exchange of views it is decided to transfer Article 2 to Chapter I (right-hand column, DESCAMPS draft).

[41] The position which it will occupy in this chapter will be discussed and settled later.

<sup>1</sup> Hall of the Truce. Present: His Excellency Mr. STAAL, *president of the Conference*; Jonkheer VAN KARNEBEEK, *vice president of the Conference*; their Excellencies Count NIGRA, Sir JULIAN PAUNCEFOTE, *honorary presidents of the Third Commission*; Chevalier DESCAMPS, *president and reporter*; Messrs. ASSER, Baron d'ESTOURNELLES DE CONSTANT, HOLLS, LAMMASCH, MARTENS, ODIER, Dr. ZORN, *members of the committee of examination*.

<sup>2</sup> See annex 9.

As to Article 2 (left-hand column, MARTENS draft) it is adopted in the following form:

The Powers which accept arbitration sign a special act (*compromis*) in which the subject of the dispute and the extent of the powers of the arbitrators are clearly defined, and in which the engagement of the two parties to submit in good faith to the arbitral award is confirmed.

#### ARTICLE 3

The two articles 3 (left-hand column and right-hand column) are stricken out, their provisions having been incorporated in the preceding article.

#### ARTICLE 4

After a long discussion regarding (1) the personality of the arbitrator, (2) the number of arbitrators, the committee decides by a majority vote that there is reason for fixing the number of arbitrators chosen by each party at 2.

The text of Article 4 (right-hand column) is adopted with the following three modifications:

1. Paragraph 3, line 1, substitute the words "*two arbitrators*" for the words "*one arbitrator*."
2. Paragraph 4, line 3, omit the words "*or person*."
3. Paragraph 5, omit the words "*or person*."

#### ARTICLE 5

The text in the right-hand column is adopted. Paragraph 3 of Article 26 (left-hand column) being a duplication of this article, it is stricken out.

#### ARTICLE 5 bis

This article is adopted in the following form: "*The umpire is president de jure of the tribunal. When the tribunal does not include an umpire it appoints its own president.*"

#### ARTICLE 6

Mr. HOLLs requests the retention of the original draft (left-hand column), he insists upon the remarks which he made previously, and summarizes them by saying that if the appointee no longer exists, the commission could no longer exist, personal confidence being the basis for the choice of arbitrators.

Mr. HOLLs reserves the right in any case to present his views to the Commission in plenary session.

In supporting these views, Mr. MARTENS believes also that the matter of appointment of an arbitrator is a question of personal confidence. If the subject of this confidence disappears it is a natural circumstance which changes the state of facts existing when the *compromis* was signed, and consequently nullifies it.

The PRESIDENT calls attention to the fact that the argument of Mr. HOLLs is significant when we are concerned with an umpire, but not when we are dealing with arbitrators.

The PRESIDENT consults the committee upon the question as to whether it shall adopt the new or the old draft.

The new draft is adopted by a majority of 4 to 3 with two abstaining from voting.

In favor of the old draft: Messrs. HOLLIS, MARTENS, LAMMASCH.

Abstaining: Messrs. PAUNCEFOTE, NIGRA.

In favor of the new draft: Messrs. DESCAMPS, ZORN, ASSER, ODIER.

#### ARTICLE 7

Adopted (*right-hand column*).

#### ARTICLE 8

Adopted (*right-hand column*) with this modification: "Parties" instead of "States."

#### ARTICLE 9

Adopted (*ibid.*)

[42]

#### ARTICLE 10

Adopted (*ibid.*)

#### ARTICLE 11

Adopted (*ibid.*)

#### ARTICLE 12

Adopted (*ibid.*)

#### ARTICLE 13

Adopted (*ibid.*)

#### ARTICLE 14

Adopted (*ibid.*) with the addition of this sentence suggested by Mr. BOURGEOIS to meet the views expressed upon this point at the tenth session: "*In case of refusal the tribunal takes note of it.*"

#### ARTICLE 15

Adopted (*ibid.*) with this modification, line 3, "*they may consider expedient in*" instead of "*concerning.*"

#### ARTICLE 16

Adopted (*ibid.*)

#### ARTICLE 17

Adopted (*ibid.*)

#### ARTICLE 18

Adopted (*ibid.*)

#### ARTICLE 19

Chevalier **Descamps** furnishes the committee with explanations regarding the various formalities which are alluded to in the last sentence of this article.

Article 19 is adopted.

#### ARTICLE 20

Adopted (*ibid.*). The word "discussions" (*débats*) is substituted for the word "discussions" (*discussions*).

## ARTICLE 21

Adopted (*ibid.*)

## ARTICLE 22

*Shall the award state the reasons upon which it is based?*

Dr. Zorn having previously reserved the right to return to his proposal,<sup>1</sup> asks the committee to add to this article the words "*must state the reasons upon which it is based,*" after these words: "The award, given by a majority of votes." He believes that this addition is necessary to the development of the law of nations. He therefore insists upon the views which he expressed in favor of this idea at the last meeting.

Mr. Martens, for his part, again objects that while this obligation to state the reasons for the award would no doubt be an advantage from a legal view-point, it would be a hindrance from a practical view-point. He distinguishes two different kinds of "reasons" which might explain the award, those of fact and those of law.

As for points of law, the obligation to state the reason for the award probably would not prevent the arbitrators from signing, but as to points of fact which give rise to the controversy it would be different. To state the reasons therefor would very often recognize the fault or inaccuracy of one of the litigant States.

Mr. Holls supports the view of Mr. MARTENS.

Mr. Asser asks Mr. MARTENS if he can cite a single arbitral award in which the reasons were not given. He adds that he sees a strong guaranty of impartiality in the obligation imposed upon arbitrators to state the reason for their decision. Thanks to this guaranty the award will never be considered arbitrary.

Mr. Martens has never had any idea—far from it—of preventing the [43] tribunal from stating the reasons for its judgment: what he desires on the contrary is to leave it entire freedom of action. Responding to the question of Mr. ASSER, he cites cases of arbitration such as those of the *Alabama* and the Bering Sea Fisheries in which certain members of the tribunal refused to affix their signatures to the award because it stated the reasons therefor.

Chevalier Descamps, referring to the observations which he has already expressed, again insists thereon with a view to reconciliation. It seems to him impossible to deprive the parties of the fundamental guaranties of which Mr. ASSER has spoken.

After this discussion, the President puts to vote the question of adding the words "*must state the reasons on which it is based,*" proposed by Dr. ZORN. This addition is adopted by a majority. Consequently, Article 22 will be redrafted as follows:

The award, given by a majority of votes, must state the reasons on which it is based. It is drawn up in writing and signed by each member of the tribunal.

Those members who are in the minority may record their dissent when signing.

## ARTICLE 23

Adopted (*right-hand column*).

<sup>1</sup> See tenth meeting.

## ARTICLE 24

*Question of revision*

Mr. **Holls** asks for the discussion of his amendment intended to permit every litigant to demand a rehearing before the same judges within six months.<sup>1</sup>

In support of this amendment, Mr. **HOLLS** submits to the committee observations which may be summarized as follows:

He admits, as does Mr. **MARTENS**, the principle that the award should be final and without appeal, but his amendment respects this principle; what he desires to provide for is an entirely different thing from the dissatisfaction of one of the parties, it is for the discovery of a new fact. It cannot be admitted that this discovery should be considered as not having been made when it may completely modify the situation which was before the arbitrators. For example, if it happened that several days after the award an authentic map should be discovered which fixed exactly the boundaries regarding which they had previously had only indefinite data, it seems that in that case, without resorting to the procedure for revision, strictly speaking, and without its being necessary to call upon new judges, it will be very natural for the arbitrators to be authorized to examine again the situation which they knew but imperfectly before.

Dr. **Zorn** does not think he can yet express himself upon the proposition of Mr. **HOLLS** which is undoubtedly very worthy of receiving attentive examination. It might be possible in fact for a decision to be final and yet be erroneous.

If the proposition of Mr. **HOLLS** were not adopted, it would then be necessary at least to modify Article 12, and to grant to the parties the right to produce complementary acts even after the close of the discussions. Furthermore, it is very clear that the proposition of Mr. **HOLLS** has nothing in common with "*appeal*," because an appeal is taken from one judge to another judge, while according to Mr. **HOLLS** the same judges would complete, so to speak, their former information.

Neither is Mr. **Asser** indisposed to accept the proposition of Mr. **HOLLS**, but he asks that it be drafted more exactly.

His Excellency Sir **Julian Pauncefote** asks if there are any precedents in which revision had occurred under circumstances as general as those indicated by Mr. **HOLLS**. The Italian treaty expressly provided for cases in which a rehearing might be had. Is it possible to substitute for these limited provisions a stipulation of a general character?

Chevalier **Descamps** thinks that in these limited cases authority might be provided, but not generally. Such a provision can only be left to the initiative of the parties when they believe it to be justified.

Mr. **Holls** thinks on the contrary that this provision should be inserted in the general act.

Mr. **Bourgeois** reads Article 13 of the treaty between Italy and Argentina to which Sir **JULIAN PAUNCEFOTE** has just alluded.

Mr. **Holls** declares that he has no preference as to form; he will accept any text whatever, provided that the guaranty of the principle with which his Government is concerned is expressly safeguarded.

[44] For example, he would accept the text of the article of the Institute of International Law which Mr. **DESCAMPS** has read to him.

<sup>1</sup> See Article 7 of the American draft (see annex 7).



Mr. **Martens** objects that Article 12 has already provided that there should be two distinct phases in arbitral procedure:

1. Communication of the documents relating to the procedure.
2. Discussions.

There is no doubt that the first period must have an end. In the case of the second, Mr. **MARTENS** does not consider that there is any possibility of such suggestions as those made by Mr. **HOLLS**.

Jonkheer **van Karnebeek** is not favorable to a rehearing.

1. How will you define a new fact? There is a great deal to be left to judgment, and who will be the judge?

2. The principal object of an arbitration is to put an end to a dispute, while in private law the essential thing is to elucidate the principle of law.

3. Mr. **Holls** declares that the rehearing will take place before the same judges, but does not provide for the very possible case where, in the interval of six months which he has pointed out, the same judges cannot be obtained. This objection should appear very strong to Mr. **HOLLS** who attaches so much importance to the personality of the judges. If the judges who have pronounced the award cannot be brought together, again, will you call new judges?

Then it will be a new arbitration and no longer a rehearing.

4. Finally, if the new fact is discovered within a period which extends some few days beyond the six months provided for, the equity and the guaranties which you prize should require a rehearing on that date also.

Mr. **Martens** also wonders who will be the judge of this new fact? The losing party no doubt.

Will it not be attempted to regard as new facts arguments which it may have neglected to make use of or which it may not have presented at the proper time.

At the request of Mr. **Holls** the proposition is reserved and will be taken up again at the next meeting.

#### ARTICLE 24 *bis*

This article was adopted except for the substitution of the word "*Powers*" for the word "*States*."

Before reading Article 25, Mr. **HOLLS** asks leave to put to the committee the question he has already submitted regarding authorizing any one who makes request therefor to make copies of the arbitral award and of the public documents produced before the tribunal (cases, counter-cases, etc.).

Doubtless it will be difficult sometimes to distinguish between the public documents, and documents which are not public, but the tribunal itself will have to make this distinction.

The **President** asks Mr. **HOLLS** to kindly prepare a text along the line of this suggestion.

Mr. **Holls** replies that the text which he has given may serve as a basis for the discussion.

Chevalier **Descamps** does not think that this proposition of Mr. **HOLLS** can be adopted, because the right to decide whether there is a reason for declaring public documents produced in the course of the arbitration proceedings belongs to the litigant States, and we cannot take this right away from them by imposing publicity upon them in spite of them or in spite of one of them.

Mr. **Holls** says that his proposition applies only to the procedure of the permanent tribunal and of course reserves all special arbitrations.

The **President**, noting this declaration, proposes to adjourn the discussion of the **Holls'** motion until the second reading of the plan for the permanent tribunal.

It is so decided.

#### ARTICLE 25

Article 25 is adopted with the substitution of the word "*against*" instead of "*at the expense of.*"

The 25 articles concerning arbitral procedure are adopted upon second reading.

Reservation is made as to Article 4, regarding which Messrs. **MARTENS** and **DESCAMPS** asked the **PRESIDENT** to kindly settle the tie vote by fixing the final form of this article.

In the same way the proposal of Mr. **HOLLS** regarding a rehearing will be drawn up and inserted after Article 23.

[45] The next meeting is set for Saturday, July 1, at 2:30 o'clock.

Order of business:

1. Clause of revision;
2. Second reading of the plan for a permanent tribunal.

The meeting adjourns.

# TWELFTH MEETING

JULY 1, 1899<sup>1</sup>

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Mr Léon Bourgeois presiding.

The minutes of the eleventh meeting are read and approved.

## Examination, Upon Its Second Reading, of the Draft of "Code of Arbitration Procedure" (Question of Revision)<sup>2</sup>

The President communicates his decision, rendered by virtue of the authority conferred upon him by the committee, as to the form of Article 4 of Chapter III (Arbitration procedure).<sup>3</sup> He has retained the article in the right-hand column, replacing the first section of the sentence in paragraph 2 by these words: "In the absence of a convention to the contrary," and inserted in paragraph 3 "together choose."

Chevalier Descamps reads a provision which he has drawn up at the request of Mr. HOLLS regarding the *communication of the documents*. He proposes to introduce it during the discussion of the permanent tribunal. This question is therefore reserved.

### *Question of revision*

Mr. Asser also reads the draft which he has adopted, in agreement with Mr. HOLLS, relating to the question of *rehearing or revision*.<sup>4</sup>

Mr. ASSER observes that he has considered the various opinions expressed in the committee by endeavoring to limit as far as possible the chances for revision.

Before submitting the text presented by Mr. ASSER for discussion, the President asks the advice of the committee upon the principle of revision.

Mr. Odier declares that he has no instructions upon this subject, but that his own opinion is rather hostile to revision. He insists above all things that arbitration should be final.

The vote upon the principle of revision: *Ayes*: Asser, Zorn, Lammasch,

<sup>1</sup> Hall of the Truce. Present: His Excellency Mr. STAAL, *president of the Conference*; Jonkheer VAN KARNEBEEK, *vice president of the Conference*; their Excellencies Count NIGRA, Sir JULIAN PAUNCEFOTE, *honorary presidents of the Third Commission*; Chevalier DESCAMPS, *president and reporter*; Messrs. ASSER, Baron d'ESTOURNELLES DE CONSTANT, HOLLS, LAMMASCH, MARTENS, ODIER, Dr. ZORN, *members of the committee of examination*.

<sup>2</sup> See annex 9.

<sup>3</sup> *Ibid.*

<sup>4</sup> See this text below as modified at the suggestion of the President.

Nigra, Pauncefote, Holls. *Nays*: Odier, Descamps, Martens.

[46] The principle being accepted, the **President** passes to the discussion of the text.

His Excellency Sir **Julian Pauncefote** observes that revision cannot be demanded except in the case where new documents have been discovered; does this exclude fraud?

Mr. **Holls** replies that fraud evidently constitutes a case of nullification and a *new fact*.

The draft of Mr. **ASSER** may be so understood.

His Excellency Sir **Julian Pauncefote** thinks that we might refer to the text of the Italian treaty which seems to him a useful precedent.

Mr. **Asser** believes that the article of this treaty is much too broad, because it provides in reality not only for revision but for *appeal*.

The **President** thinks that we must carefully distinguish between the discovery of an *error* and the discovery of a *new fact*. In the former case it is not possible to reopen the award, because it would be putting the conscience of the judges in question.

In the second case the conscience of the judges is not in question. It must also be well understood that a fact is new because it was not known at the time to the arbitrators or to the parties to the suit. Cannot the article be redrafted with this in mind?

His Excellency Sir **Julian Pauncefote** asks to have read an interesting commentary on Article 13 of the treaty between Italy and Argentina written by Professor **CORSI** which touches the point under discussion.<sup>1</sup>

After having read this commentary, the **President** asks who will establish the existence of fraud: he endorses the remarks of Mr. **ASSER** regarding the too general character of the article of the treaty between Italy and Argentina. He emphasizes the difficulties, which are here so serious, which will be raised by the adoption of this article.

The committee, sharing this point of view, does not adopt the text of the treaty between Italy and Argentina.

Mr. **Martens** declares that revision is contrary in principle to the very nature of arbitration, except of course where there are provisions to the contrary. He does not wish to refer again to the danger of prolonging disputes which it is desired to end. But he recalls cases where, after the arbitral decision was rendered, the losing party proclaimed that it had documents which had not been submitted to the arbitrator. If the losing party is given this right for three months, why not give it to him for six months or more?

His Excellency Count **Nigra** asks leave to present a question: if, to suppose an impossible case, we assume that a Government has produced a forged document, what tribunal will be competent to declare the fraud?

Mr. **Asser** does not contest the importance of the argument of Mr. **MARTENS**; that is why he has adopted a period of three months, a very short period when compared to the duration of an arbitration, which is generally so long. Certainly all that Mr. **MARTENS** says is true, if we admit that there has been no fraud or omission of a document. But in the contrary case, would it not be better to prolong the dispute than to sanction an injustice?

<sup>1</sup> International Arbitration, International Tribunal, by Evan Darby (Peace Society, New Broad street, 47 E. C.). Plan of Professor Corsi, Article 40, p. 163.

His Excellency Sir Julian Pauncefote supports this opinion. Both views have their defects, but in case of doubt it is better to do everything in order to repair an injustice.

Mr. **Asser**: Replying to the question of Count NIGRA, the arbitration tribunal itself would decide whether it was false or not.

Mr. **Holls** is of the opinion that the period of three months is sufficient.

In general, attention is very keenly aroused concerning an arbitration, and if in spite of this, a new fact is discovered, it surely will be discovered within a few days or a few weeks at the most after the rendering of the award.

Three months seems to be a sufficient period under these conditions. If there is no rehearing, we gain three months it is true, looking at the matter from the view-point of ending the dispute, but we run the risk of not being able to repair an obvious injustice.

Chevalier **Descamps** replies that the possibility of an injustice is inherent in all human courts; we cannot however in providing for such injustice prejudice the exercise of justice itself.

Furthermore, what would be the situation of the arbitrators during these three months? They will always be exposed to the risk of being called together again.

Mr. **Martens** desires to make the question definite. There are two distinct points of view to be considered.

1. Justice.
2. International conciliation.

As lawyers we are certainly conscientiously in favor of revision. But revision is a dangerous weapon which will shake the authority of arbitration. [47] The award rendered will be subject to all the attacks of the press, encouraged by this hope that it is not final.

In countries having a parliamentary Government opinion might call upon the Government to demand a rehearing. The dispute would thus be perpetuated instead of extinguished. Now what is our purpose? Is it not *international peace*, and should it not occupy our minds above all things?

Mr. **Holls** replies that nothing will discredit arbitration more than to let this fear of a possible irreparable injustice gain ground.

The **President** remarks that, in fact, the question presented amounts to delaying the execution of the arbitral award for three months. According to his view there is no reason whatever for the discovery of the new fact on the very day following the decision, as Mr. **Holls** thinks. The question of revision will arise later, even years afterward, upon the death for example of one of the persons interested in the dispute, thanks to the posthumous discovery of documents. And again, the additional three months will produce only inconvenience without any of the advantages which you seek. But, the **PRESIDENT** concludes, the committee having pronounced itself in favor of the principle of revision, we are concerned with adopting a text which will raise the fewest possible objections. The **PRESIDENT** proposes the following draft:

The revision of the arbitral award cannot be demanded except from the tribunal which pronounced it, and only on the ground of the discovery of some new fact which is of a nature to exercise a decisive influence upon the award and which, at the time of the award, was unknown to the tribunal itself and to the parties.

Proceedings for revision can only be instituted by a decision of the

tribunal declaring the demand admissible, and expressly recording the existence of the new fact, and recognizing in it the character described in the preceding paragraph.

No demand for revision may be received three months after notification of the award.

Messrs. **Holls** and **Asser** accept this draft.

Mr. **Martens** is absolutely opposed to it, as is also Chevalier **Descamps**.

His Excellency Sir **Julian Pauncefote** asks that the following be added "in the absence of provisions to the contrary." This is agreed to, and Chevalier **DESCAMPS** will formulate this idea in order to add it to the draft proposed by Mr. **BOURGEOIS**.

The **President** asks whether mention should not be made of the reservation of vested rights.

Mr. **Martens** insists upon stating the reasons for his vote, saying that the provision for a rehearing amounts to a suspension of the execution of the arbitration for three months.

The award will therefore be provisional, and this because of a possibility which will not happen except in rare instances.

Upon being proposed and put to vote by the **President**, the text is adopted by a majority vote.

(Messrs. **DESCAMPS** and **MARTENS** vote against it; Mr. **ODIER** allies himself with the majority.)

### Examination, upon Its Second Reading, of the "Plan for a Permanent Tribunal of Arbitration"<sup>1</sup>

Chevalier **Descamps** reads Article 1. So far as form is concerned, he proposes to make this article agree with the preceding Article 13. Consequently, Article 13 is modified as follows: "*With a view to developing the practice of arbitration, the high contracting parties, etc. . .*"

Dr. **Zorn** recalls the reservation which he had made regarding the principle of a permanent arbitral tribunal.<sup>2</sup> He is happy to be able to declare to-day that his Government has accepted the principle of this innovation in the form suggested by Sir **JULIAN PAUNCEFOTE**, and solely because of the freedom left to Governments to choose their arbitrators voluntarily from a list. His Government recognizes the importance and magnitude of this new institution, but it has some objections to present, first as to the name of the tribunal and second as to the questions in connection with Article 10. He will not enter into the latter until a discussion of this article is taken up.

Dr. **ZORN** proposes as a title these words: "Permanent Court of Arbitrators," and upon objections being raised to the form, he accepts the following title: "Permanent Court of Arbitration" in place of the word "Tribunal."

The committee accepts this draft. Chapter II will therefore be entitled as follows:

<sup>1</sup> See annex 9.

<sup>2</sup> See the minutes of the sixth session.

[48]

II.—*The Permanent Court of Arbitration*

## ARTICLE 1

Adopted with the following modification: "Court" instead of "Tribunal" (line 6) and substitution in the last part of the sentence of these words (line 9): "In accordance with the rules of procedure inserted in the present Convention."

ARTICLE 1 *bis*

Adopted, except for the substitution of the word "Court" for the word "Tribunal" (line 1), and the omission of the words "whether obligatory or voluntary." The last word of this article "arbitral" is omitted.

## ARTICLE 2

Chevalier **Descamps** asks if the words "Central Bureau" express the intent of the committee; it is in reality an *International Bureau* which we are creating.

This last designation is adopted. The entire article is voted upon and adopted upon the second reading in the following form:

An International Bureau established at The Hague under the direction of a permanent secretary general, serves as registry for the Court

It is the channel for communications relating to its meetings.

It has custody of the archives and conducts all the administrative business.

Mr. **Holls** proposes an amendment in the following terms at the end of this article: "*It communicates and delivers copies of the official documents of the Court in accordance with rules adopted by it.*"

Dr. **Zorn** observes that this provision is contained in the last paragraph of Article 2 conferring upon the Bureau the conduct of all the administrative business.

Jonkheer **van Karnebeek** declares that we cannot in every case leave to the diplomatic corps at The Hague the duty to decide what shall be published. It would be better to entrust this duty to the arbitrators who have been the judges.

Dr. **Zorn** objects that the question is not only one relating to the tribunal but also and primarily one pertaining to the Governments.

The **President** wonders whether Mr. **Holls'** provision does not defeat its own end, because it is of such a character as to turn Governments away from the permanent tribunal out of fear of publicity.

Mr. **Holls** admits this view and seconds the suggestion of Dr. **Zorn** who believes that with an explanation which the report of the subject will include, the last paragraph of Article 2 is sufficient to ensure the publicity of documents. Consequently, it is understood that the reporter will kindly indicate in his commentary the interpretation which this paragraph permits.

Furthermore, publicity will be subject to the two-fold consent of the Bureau and the Governments.

## ARTICLE 3

Paragraph 1 is adopted without change.

In paragraph 2 *Court* will be written instead of *Tribunal* (line 2), and *International* in place of *Central* (line 5).

Paragraphs 3, 4 and 5 are adopted except for the word *Court* which will be used instead of *Tribunal*.

Paragraph 6 is adopted in the following form following modifications and additions suggested by his Excellency Count Nigra and by Mr. Asser:

In case of the death or retirement<sup>1</sup> of a member of the Court, his place is filled in the same way as he was appointed. Any alteration of the list of arbitrators is communicated to the International Bureau and without delay brought by the latter to the knowledge of the signatory Powers.

Mr. Holls asks that we write into this article the principle suggested by Chevalier DESCAMPS regarding the immunity of arbitrators.

It is decided that this principle will be inserted in Article 4, subject to further revision.

[49]

The first two paragraphs of Article 4 are combined and adopted in the following form:

The signatory Powers which desire to have recourse to the Court for the settlement of their differences select from the general list such number of arbitrators as may have been agreed upon between them.

They notify to the Bureau their intention to have recourse to the Court and the name of the arbitrators whom they have designated.

Paragraph 3 is modified and redrafted as follows: *In the absence of a convention to the contrary, the arbitral tribunal will be formed according to the rules set forth in Article 10 of the present Convention.*

It is understood that the same formula will be adopted for Article 4 of the code of procedure. The last two paragraphs of Article 4 are adopted without modification.

#### *Question of calling attention to arbitration*

The President observes that the French delegation has proposed<sup>2</sup> to assign to the International Bureau the duty of calling the attention of the parties to the existence of a permanent tribunal, in order to encourage recourse thereto. There is good reason to take this precaution so that Powers may not be stopped by any feeling of honor, and that each one of them may not feel obliged to wait for the other to begin. Why not make a provision in connection with the permanent tribunal analogous to the clause presented by Count NIGRA relating to good offices and mediation, and declare that such a reminder under these circumstances shall not be regarded as an unfriendly act? This would be a great service to the cause and operation of international arbitration.

Mr. Lammasch says that there is great difference between the offer of mediation and the reminder of the existence of arbitration. Might not this reminder be somewhat offensive to the parties in certain cases?

His Excellency Count Nigra was also of the same opinion as Mr. BOURGEOIS when he proposed originally that every Power should have the right to offer mediation or arbitration — and that this initiative should not be considered as an unfriendly act.

<sup>1</sup> It is understood that the word "retirement" will be taken in its broadest sense (act of withdrawing) — to be noted in the report.

<sup>2</sup> See the minutes of the sixth meeting.



Baron d'Estournelles supports the opinion of Mr. BOURGEOIS. Some means must be found to put the Permanent Court of Arbitration into operation and, as the PRESIDENT has said, to accustom the Powers to resort to this new organization. To accomplish that it is necessary to help Governments to take the step. It matters little what means are used to start action by them. Considering the susceptibility of public opinion and the reluctance of each Government to decide before the other, it is, so to speak, necessary to have a mechanism which will operate on its own motion, and put Governments in a position to speak. It is necessary to have an automatic process which will oblige them to make a decision in favor of or against arbitration before public opinion and parliaments; if we find this mechanism, and if we designate the person charged with the duty of sending out the letter of invitation then the situation will be entirely changed. It will be as difficult for a Government to decline to resort to arbitration as it was for it to accept it up to that time in serious cases.

Mr. Holls endorses this view-point.

Mr. Martens would ask nothing better than to be able to support the suggestion of the French delegation himself, but it seems to him difficult to apply it. Who will be the intermediary? The Bureau? It will not have sufficient moral authority. The Council? The diplomatic corps will not be sufficiently independent; each one of its members will be bound by his instructions.

The President recognizes the weight of the objections of Mr. MARTENS, but they do not convince him. Doubtless there will be difficulties to be met by the Powers, but that is still another reason to seek some method; if not, we shall have reached only apparent results, nine times out of ten a feeling of honor will prevent States which most desire to resort to arbitration from deciding to do so. Let us therefore seek the form since we are in agreement upon the principle.

His Excellency Count Nigra and Mr. Odier recognize the importance of the arguments invoked in favor of Mr. BOURGEOIS' proposition.

Dr. Zorn does not deny this importance, but he too believes that it is necessary to seek some form to make the idea practicable.

Chevalier Descamps believes that calling attention of the parties to the existence of a permanent court and the advice to resort to this court are essentially of the same character as good offices. A practical formula must be sought in this direction.

After a general discussion, the committee decides to introduce a provision, the text of which will be adopted later, with a view to providing that arbitration may be recommended and that the advice will be considered according to the expression of Chevalier DESCAMPS: "like an offer of good offices."

Adopted.

The next meeting is set for Monday, July 3, at 2:15.

Order of business:

1. Continuation of the second reading of the plan for the Permanent Court of Arbitration.

2. Articles 7 to 13 "The system of arbitration and disputes dependent thereon."<sup>1</sup>

The meeting adjourns.

<sup>1</sup> See annex 9.

# THIRTEENTH MEETING

JULY 3, 1899 <sup>1</sup>

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Mr. Léon Bourgeois presiding.

The minutes of the last meeting are read and approved.

The order of business calls for the continuation of the discussion of the plan for the Permanent Court of Arbitration.

## Examination, Upon Its Second Reading, of the Plan for the "Permanent Court of Arbitration"—Continued—(Question of the "Duty of Powers")<sup>2</sup>

The **President** recalls that the committee at its last meeting decided upon the principle to introduce among the provisions relative to the Court of Arbitration, an additional article intended to facilitate access to the Court.

Baron d'Estournelles asks to be heard in order to submit to the committee a proposal which he has drawn up in support of that of Mr. BOURGEOIS.

GENTLEMEN: The proposal which I have the honor to submit to you in support of that of Mr. LÉON BOURGEOIS is on my own personal responsibility, as I have not had time to consult our Government, it is therefore binding upon me alone; it is another contribution to the many efforts which for six weeks you have been making with an admirable spirit of harmony and energetic good-will to finish well the great task which is confided to us.

We are approaching the end of our labors, we are going to create a court, a code of international arbitration. That is something when we recall that nothing of its kind existed before our meeting at The Hague. It is but little when we think of all that humanity expects from us. At least we must see that the little accomplished shall be real. The Conference has already caused great misconception among the masses, notably by refusing to put a limit upon the increase of armaments and upon existing armies; what will be the situation if our Court of Arbitration shall exist only on paper, and if instead of fulfilling our duty which is to avoid war, we limit ourselves to formulating declarations without effect?

Now we know that a permanent court is in danger of not being a living organism. Mr. BOURGEOIS pointed out in the last meeting that nine out of ten

<sup>1</sup> Hall of the Truce. Present: His Excellency Mr. STAAL, *president of the Conference*; Jonkheer van KARNEBEEK, *vice president of the Conference*; their Excellencies Count NIGRA, Sir JULIAN PAUNCEFOTE, *honorary presidents of the Third Commission*; Messrs. ASSEER, Baron d'ESTOURNELLES DE CONSTANT, MARTENS, HOLLS, LAMMASCH, OBIER, ZORN, *members of the committee of examination*.

<sup>2</sup> See annex 9.

times, at the moment when a serious dispute arises, the interested Powers [51] would not dare to resort to the Court and that the greater number of them, especially the weaker Powers, would be stopped by national scruples, by a feeling of honor, by the moral impossibility of taking the first step. We therefore find ourselves face to face with a truly ludicrous situation: we are creating institutions to prevent war and the Court to which States may resort on any occasion — except when war is threatened!

How will we avoid attaining a result so contrary to our intentions? Gentlemen, I see only one practical method, one which is really efficacious. Let us have the courage to go to the bottom of things and expressly call attention in our general act to the fact that States have not only common interests and rights but duties.

Among the first of these duties all the Governments have more and more the duty of listening to public opinion. Think of the reception which awaits us when each of us returns to his country next October and has to explain not his intentions but the material results of the Conference, if we are obliged to say that these results are illusory, and if the radical parties taking advantage of our admission of powerlessness go about everywhere proclaiming with their habitual violence that the labors of our assembly have been only a shadow, a cruel hoax!

I admire, but alas! I cannot share, the optimistic belief developed by Colonel GROSS VON SCHWARZHOFF in his recently published speech.

I even question whether it is prudent to affirm this optimism too much. We cannot, alas, disguise from ourselves the fact that in all civilized countries the laboring population suffers from the same evil, the imposition upon their shoulders of three new and excessive burdens:

1. The weight of a competition unknown in the past which the increase in the means of transportation has produced in all parts of the world.
2. The increase in the development of machinery.
3. The obligations of an armed peace.

Can we without danger declare that these burdens are not too heavy? Perhaps the people will not reply. Still, I am not certain of this point, because you know the general state of mind in Europe, and the demonstrations which break out simultaneously in so many points should put us on our guard. In any case, when their discontent is translated into action, we shall not only see self-deluded Governments threatened, but we shall see all civilized nations menaced precisely because the same interests, the same duties, and a joint liability unite them. It is because of this liability that I beg you, gentlemen, to perform a work truly alive and beneficent, to show yourselves an example to the Governments of that initiative which the world is so impatiently waiting for us to exhibit; I propose to you the method, not to oblige States in dispute to resort to arbitration, but — what amounts to the same thing — by safeguarding their independence and their dignity, the means to put them in a position to choose between arbitration and war, to formally declare or accept in the face of opinion the final expedient of a pacific settlement. You will obtain this invaluable result by changing only one word in our text, by substituting for the ideal of *right* the superior ideal of *duty*. Yes, the word "*duty*" will give to the general act of The Hague all its moral effect, all its strength; it responds to the call of our consciences, and the generous intentions of the Czar, to the hopes of humanity which has its eyes fixed upon us.

Baron d'ESTOURNELLES proposes therefore to add the following article:

The signatory Powers consider it their duty, if a serious dispute threatens to break out between two or more of them to remind these latter that the Permanent Court is open to them, and authorize the secretary general of the Bureau to place himself when the event occurs, at the disposal of the interested parties, by addressing a letter to their representatives in the Netherlands.

The exercise of this authority shall not be considered as an unfriendly act.

Baron d'ESTOURNELLES then reads a draft of the letter which the secretary general would address to the representatives of the Powers in controversy at The Hague:

**YOUR EXCELLENCY:** The signatory Powers of the general act of The Hague having expressly bound themselves to neglect no means of promoting the pacific settlement of disputes which might threaten to break out between two or more of them and these Powers having, by Article 10 of the same act, authorized the secretary general of the International Bureau at the proper time to recall this obligation to the interested parties, I have the honor to advise you that I am at your disposal for the purpose of convoking the Permanent Court of Arbitration in case the Government of . . . should feel itself under an obligation to notify me of its intention in this regard as well as of the names of the arbitrators designated.

[52] A general discussion takes place regarding the proposal of Mr. d'ESTOURNELLES.

Mr. **Holls** considers that the idea expressed therein is very important. If it can be made practical he will be sincerely gratified, but he would like to have time to think about it in order to be sure that Governments might not be embarrassed by the suggestion of arbitration. So far as the United States of America itself is concerned, the proposition will have to be examined with care to see whether it might not affect the distinction established by the traditional policy of this country between questions which are purely European and purely American.

Mr. **Odier** has listened with a great deal of interest to the exposition of Mr. d'ESTOURNELLES. He asks whether it would not be in line with the idea of the latter to provide for the Powers not represented at The Hague.

Baron d'Estournelles replies in the affirmative. The secretary general should write directly to their Ministers of Foreign Affairs.

His Excellency Count **Nigra** thinks that it is perhaps difficult to write into the very body of the convention the article proposed by Mr. d'ESTOURNELLES, but could not an analogous idea be expressed in the final protocol?

Dr. **Zorn**: The desire of Mr. d'ESTOURNELLES is a desire common to all of us, we cannot express it better than he has done. I support it with all my heart, but a serious difficulty stands in the way of its realization: that is the choice of the secretary general of the Bureau; can we require States to accept the advice of this secretary?

He will not have the necessary moral authority. He therefore will not have a chance to succeed.

Finally, I appreciate the desire of Mr. d'ESTOURNELLES, but I ask that it be modified, so as not to specially contemplate the secretary general.

Mr. **Asser** makes reservations, because the Netherland Minister, being presi-

dent of the administrative council, would assume a great responsibility upon the sending of the letter by the secretary general. Having stated that, however, he desires to reply to the objections of Dr. ZORN.

In the first place, the slight political importance of the duties of the secretary general is of benefit here: his very weakness protects him and shelters him from the sensitiveness of the States.

In the second place, he will simply make a communication by virtue of the authority of the Powers; he will be their messenger.

His Excellency Sir **Julian Pauncefote** declares that he also is in favor of the proposition of Mr. D'ESTOURNELLES.

His Excellency Count **Nigra** thinks that if the article proposed by Mr. D'ESTOURNELLES were adopted, we might omit the second paragraph concerning friendly character, since we are dealing with the action of a mere functionary.

Chevalier DESCAMPS estimates highly the purpose in view and recalls the fact that he himself in a recent study concerning "The Law of Peace and War" insisted upon the rights and duties of the "Messengers of Peace," in their relation to the maintenance of general peace. But he fears that the secretary general of the Bureau lacks authority, and that an awkward or ill-timed intervention on his part would compromise the institution of the arbitral court. He is fearful of leaving the secretary general to be the judge of the time when he should send out his letter calling attention to the Court. He points out an experience under almost the same conditions which fell to the secretary general of the Interparliamentary Conference. Would it not be better and more practical to say that "calling attention to the Court of Arbitration" is a form of good offices.

Chevalier DESCAMPS desires nothing better than to find a phrase implying the idea of a *duty* to be fulfilled, but that of Mr. D'ESTOURNELLES does not satisfy him.

Dr. **Zorn** shares the apprehensions expressed by Chevalier DESCAMPS. In the first place, he says, our work will not be so modest as Mr. D'ESTOURNELLES points out. In any case, we would not be promoting it if we adopted the proposed machinery. Will the secretary general be able to judge whether the dispute is acute, and will the Netherland Minister of Foreign Affairs take the responsibility of designating the time when a dispute seems to him to be acute in order to authorize the secretary to send his letter? The German Government could not accept a secretary with such political responsibility.

While affirming my sympathy with the views of Mr. D'ESTOURNELLES, I should like, he adds, to see it made practical, but in another form. Separate the idea of a secretarial staff from that of notice to the Powers.

The latter is worthy of recommendation, and Dr. ZORN is ready with this reservation to support the project of Mr. D'ESTOURNELLES.

Baron d'Estournelles replies that he does not minimize the work of the committee, far from it, but he suggests precautions in order that this work may not be rendered *illusory*. He has sought one method but he would be happy to [53] have a better suggested. He thinks however, that it is precisely to the advantage of the secretary general that his position is modest, and his character that of an automatic instrument, it is the spring which would put arbitral procedure into motion. He is the only person upon whose initiative, without offending any one, Governments might be made to make statements before parliaments and before the world by choosing publicly between war and peace.

Mr. **Holls**: Will the secretary general be the judge of the time to send his letter calling attention to arbitration?

**Baron d'Estournelles:** He will be kept informed by the representatives of the interested countries, who will know when to advise him whether the time is or is not opportune.

**Mr. Holls** wonders whether the ill-timed intervention of this secretary general might not aggravate the dispute. Could not this responsibility be given to neutral Powers, rather than to the secretary general?

**Mr. Martens** does not hesitate to lend his sympathy to the proposition of Mr. D'ESTOURNELLES, but the difficulty is this: a permanent secretary by addressing the Powers in dispute interferes, so to speak, and we know that Powers do not desire to have any one interfere in their affairs. Could we not avoid the difficulty by charging the secretary to write to this or that neutral Power to recall the existence of a permanent Court? The question of knowing whether it was necessary to intervene would then be left to the judgment of this neutral Power.

**Mr. Lammasch:** The neutral Powers will consider this interference of the secretary general as an importunity.

**Chevalier Descamps** considers the procedure suggested by Mr. MARTENS as of little practical value.

**His Excellency Count Nigra:** We have created some fifty arbitrators from all countries. Could we not impose upon these arbitrators who belong to the Powers in dispute the duty of calling the attention of their respective countries to arbitration. They are persons of importance whose advice would be listened to. The secretary general is in fact only a clerk of the court.

After a general exchange of views, Baron D'ESTOURNELLES desires to state that the committee is unanimously agreed upon the basis of his proposition. The matter of form alone is objected to.

The **President** thanks the committee for the services which it has just rendered in connection with the proposals of the French delegation. He then summarizes the discussion. The personal idea of Mr. D'ESTOURNELLES has his entire sympathy: its purpose is to exercise a moral influence upon the interested Powers by creating a mechanism which automatically, so to speak, brings them face to face with arbitration.

The difficulty is to decide whether the secretary general is capable of assuming the political responsibility which it would impose upon him.

Why has he been chosen? It is because he represents not only the will of this or that Power, but a collective will, and because he is really qualified to personify the unanimity of the Powers of which he is the authorized agent, and to symbolize the duty which they have recognized as belonging to them.

We must prove that the act of The Hague will be executed in all seriousness, that is, if we consider it a duty to resort to arbitration, then the detail of the mechanism will solve itself.

The essential thing is to bring about a general spirit, and create a new atmosphere and for that purpose to bring clearly into relief the ideal of duty: that being accomplished the means of practical application will be easy to find. But once again, what we must safeguard above all is the idea that the Powers consider it a common *duty* to suggest arbitration.

In order to consider all the opinions expressed by the members of the committee, we might thus formulate the proposition which is to be submitted to it, and it seems that the thought of Mr. D'ESTOURNELLES would in this way best be satisfactorily expressed.

Baron d'Estournelles having insisted that the text which he has drawn up be put to vote, the committee proceeds to vote.

*Aye:* PAUNCEFOTE, BOURGEOIS, ODIER;

*Nay:* DESCAMPS, ZORN, LAMMASCH, MARTENS, NIGRA;

*Abstention:* ASSER, HOLLS.

After this vote upon the entire text, the PRESIDENT consults the committee as to the first part.

[54] His Excellency Count Nigra observes that if we accept the expression "*duty*" we expose certain Powers to the danger of failing to fulfill it.

He nevertheless proposes to adopt the text of Mr. D'ESTOURNELLES concluding with the words "that the Permanent Court is open to them."

The first part of the proposal of Mr. D'ESTOURNELLES being put to vote is unanimously adopted. (Mr. HOLLS reserves the right in the name of his Government, to return to the question or to make a declaration similar to that which he presented above, page 761.)

The President after having announced this unanimous vote, thanks the committee for having decided to write into the act of The Hague the word "*duty*," and he emphasizes the moral and practical effect of this decision: in the future States will not consider themselves as indifferent to each other. When a dispute threatens to bring two of them into war, they will not be passive neutrals but *responsible neighbors*, which will have the *duty* of safeguarding the general peace.

Upon the motion of Count Nigra the committee thanks Baron D'ESTOURNELLES for his happy suggestion.

Continuing the discussion of the second part of the D'ESTOURNELLES proposal, the committee substitutes for the text submitted to it, the following draft:

Consequently they declare that the fact of one or more of them reminding the litigant parties of the provisions of the present Convention, and the advice given to them, in the highest interests of peace, to have recourse to the Permanent Court, can only be regarded as in the nature of good offices.

Dr. Zorn requests permission to return to Article 3 of Chapter II: "each Power shall select . . . two persons, etc." It would be necessary to give each one power to designate a greater number of persons, up to four for example. We would not make any difference between the larger and the smaller Powers.

But this figure of four would satisfy all requirements because there may be need of specialists of various kinds, economists, jurists, military men, diplomats, etc. We might say "four persons at the most."

Mr. Holls thinks that if all the Powers name four arbitrators the list would be too large and the office will lose its importance. He asks to be allowed to reserve his vote.

After a general discussion, the committee decides to adopt the figure four.

Consequently, paragraph 3 of this article will be modified by writing: "one or more members."

#### ARTICLE 4 *bis*

Chevalier Descamps asks to have added thereto: "with the consent of the litigant parties."

The committee adopts this suggestion.

## ARTICLE 5

The word "Power" will be used instead of "State."

His Excellency Sir Julian Pauncefote thinks that the time is come to insert an additional article authorizing every arbitral tribunal or commission of inquiry to use the *offices* and services of the secretarial staff, so as to employ the Court as much as possible.

Mr. Martens thinks that it is desirable that The Hague should become the center of international arbitration, and that we should contract the habit of taking the path to the Court. He consequently supports the motion of his Excellency Sir JULIAN PAUNCEFOTE, which seems a practical one to him.

The following draft proposed to the committee by Sir JULIAN PAUNCEFOTE is adopted: "*The bureau is authorized to place its premises and staff at the disposal of the signatory Powers for the use of any special board of arbitration.*"

Mr. Asser then proposes the communication to the secretary of copies of arbitral awards and documents concerning arbitrations. He therefore suggests the following text which is adopted: "*The signatory Powers undertake to communicate to the Bureau a copy of any arbitral agreement arrived at between them, and of all awards handed down by other tribunals than the Permanent Court.*"

Finally, the committee votes in favor of the following addition proposed by Mr. MARTENS: "*The signatory Powers undertake to communicate to the Bureau the laws, regulations, and all documents showing the execution of the awards given by the Permanent Court.*"

[55] The following additional article proposed by Mr. ASSER is not adopted: "*The members of the Permanent Court may attend the meetings of the Council with power to advise.*"

## ARTICLE 7

Adopted.

## ARTICLE 8

The draft of Mr. DESCAMPS is adopted: "*The members of the Permanent Court of arbitration during the performance of their duties enjoy diplomatic privileges and immunities.*"

### Examination, Upon its Second Reading, of the "Plan for International Commissions of Inquiry"

The committee listens to the second reading of the chapter on international commissions of inquiry already adopted upon its first reading.

With regard to mediation, the original text of Article 2 is retained upon motion of Sir JULIAN PAUNCEFOTE: "as far as circumstances allow."

Chevalier Descamps: The treaties of guaranty create a peculiar situation with regard to Belgium in connection with the choice of mediators and arbitrators for disputes which may put into question its territory, its independence, its neutrality and the other provisions of the treaty of 1839. This point must be stated.

Jonkheer van Karnebeek refers to the question of adhesions.



Chevalier **Descamps** says that the convention must not be closed. It should remain open to all the world, to all Powers.

The committee decides not to make an exception in the case of acts drawn up by it and to adopt the formula regarding adhesion adopted for all the conventions by the Conference in the general act.

The next meeting is set for Tuesday, July 4, at 3:30 o'clock.

The order of business calls for the discussion of Article 10.

The meeting adjourns.

# FOURTEENTH MEETING

JULY 4, 1899 <sup>1</sup>

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Mr. Léon Bourgeois presiding.

Chevalier Descamps submits to the committee slight modifications to Articles 1, 2, and 6 of the draft of Convention.<sup>2</sup> In Article 2 especially, upon motion of Sir JULIAN PAUNCEFOTE, and as has already been decided at the last meeting, the original text will be restored: "as far as circumstances allow," instead of "unless exceptional circumstances are opposed thereto."

The minutes of the last meeting are read and approved.

[56]      **Examination, upon its Second Reading, of Article 10  
(Obligatory Arbitration) <sup>3</sup>**

The order of business calls for the further discussion of Article 10 relating to the enumeration of cases of obligatory arbitration.

Dr. Zorn proposes the suppression of Articles 9 and 10. The German Government is not in a position to accept compulsory arbitration. It admits that all existing conventions in which arbitration is provided shall of course continue in force, for example, the universal postal conventions, the conventions relative to railway transportations, the mutual conventions, etc.

The principle of compulsory arbitration shall be maintained in all cases when already adopted by special conventions. But Germany can go no further and believes she has already done much by accepting the list of arbitrators and the Permanent Court.

Dr. ZORN hopes that unanimity which has so happily prevailed heretofore in the decisions of the committee shall not come to an end and that the great concessions previously made by him will be taken into account. He therefore suggests that the adopted wording be such as to afford equal preservation to the future and the existing conventions.

Count Nigra again declares that whatever happens, the Italian Government proposes to write into its conventions every time that it is possible the principle of *obligatory arbitration*.

A general discussion takes place regarding the form to be given to the reservations and motion of Dr. ZORN.

<sup>1</sup> Hall of the Truce. Present: His Excellency Mr. STAAL, *president of the Conference*; Jonkheer VAN KARNEBEEK, *vice president of the Conference*; their Excellencies Count NIGRA, Sir JULIAN PAUNCEFOTE, *honorary presidents of the Third Commission*; Chevalier DESCAMPS, *president and reporter*; Messrs. ASSER, Baron d'ESTOURNELLES DE CONSTANT, HOLLIS, LAMMASCH, MARTENS, ODIER, ZORN, *members of the committee of examination*.

<sup>2</sup> Annex 10.

<sup>3</sup> See fourth and fifth meetings.

Mr. **Martens** upon consideration of the observations of Dr. **ZORN** submits to the committee a new draft of Articles 9, 10 and 11, the import of which is as follows:

#### ARTICLE 9

Each State remains the sole judge of whether this or that case should be submitted to arbitration, except the cases enumerated in Article 10, and in regard to those the high contracting Parties recognize arbitration and bind themselves to practice it, either by virtue of a special convention or by virtue of the present act, as the best means of settling disputed cases peacefully.

#### ARTICLE 10

Arbitration is recognized by the contracting Parties as the best means of settling disputed cases relating to . . . (followed by the four cases in which the German Government has bound itself by special conventions to resort to arbitration.

(The words "*obligatory arbitration*" are stricken out.)

(Thus everything in Article 10 is canceled except these four cases.)

#### ARTICLE 11

In cases of disputes not provided for in Article 10, arbitration is recognized as very desirable and recommended in the following cases:

(Here follows an enumeration similar to that contained in the former Article 10.)

Dr. **ZORN** is unable to agree to this proposal which determines in fact cases where arbitration is obligatory.

When a permanent court shall be established and in operation, the opportune time for enumerating cases of arbitration which will be obligatory for all will come after individual experiences. But to hasten this evolution too greatly would be to compromise the very principle of arbitration, toward which we are all sympathetic. He therefore maintains his proposal to strike out Articles 9 and 10.

Chevalier **Descamps** states that the system proposed by Mr. **MARTENS** distinguishes between cases of obligatory arbitration, cases where arbitration is *recommended* and . . . others. But how shall we decide upon the enumeration? Chevalier **DESCAMPS** for his part finds it too restricted and would propose, for example, that mention be made of commercial treaties. He thinks that we can submit to the committee a more general provision which would replace Articles 9 and 10:

Independently of general and special treaties expressly stipulating recourse to arbitration as obligatory on the signatory Powers, these Powers reserve to themselves the right of concluding, either before the ratification of the present act or later, new agreements, general or special, with a view to extending obligatory arbitration to all cases which they may consider it possible to submit to it.<sup>1</sup>

Jonkheer **van Karnebeek** objects to the text of Chevalier **DESCAMPS** as too general.

Chevalier **Descamps** replies that he only points out a compromise formula under the force of necessity.

Mr. **Martens** will submit to the decision of the committee, but he proposed his draft with a view to save something. In reality, he is bound by the facts

<sup>1</sup> See end of the minutes.

themselves: on one hand, Germany does not wish to accept the principle of obligatory arbitration in a general act; on the other hand, this Power has already concluded special treaties providing for this obligatory arbitration. His draft had for its purpose to facilitate the adhesion of Germany by not asking that country to make any new sacrifice.

[57] Nevertheless, in order to meet the demands of Dr. ZORN he will go so far as to accept the omission of Article 10.

Jonkheer van Karnebeek expresses regret that the principle of obligatory arbitration for certain kinds of litigation is not to be written into the convention.

His Excellency Sir Julian Pauncefote shares this regret but he believes that we must make concessions in view of the categorical instructions of the German delegate, and in order not to lose the valuable assistance of unanimity which has thus far existed.

The President asks permission to make a few remarks; the majority of the members of the committee had voted in favor of the enumeration of cases of obligatory arbitration. He thinks it necessary that the expression of this view should not be passed over in silence.

The opinion of each one of us upon the fundamental principle should first be recalled and clearly expressed by a *vote*; because public opinion will regret that the obligatory idea, restricted to certain cases, covered by conventions already existing, was not written into the General Act.

Every one must be thoroughly informed that we have not changed our viewpoint, but that we have given up the attempt to make this view prevail because we desire to attain the higher end of unanimity. In order to show clearly this attitude, the PRESIDENT asks that a vote be taken upon the principle of Article 10, subject to its immediate omission in order to obtain general agreement.

His Excellency Count Nigra regrets that he cannot agree with Mr. BOURGEOIS. Our votes have already been given upon the first reading. Why repeat them? By emphasizing our disagreement we would throw into too great relief the changes of opinion which have taken place.

Finally, the cases of obligatory arbitration contained in Article 10 are in his view so worthless that they are not worth talking about, and as far as he is concerned he would have rejected the enumeration as insufficient. In order to obtain so poor a result it is not necessary to imperil the auspicious unanimity which constitutes our strength before the Third Commission.

Dr. Zorn thanks his Excellency Count NIGRA. He too is strongly in favor of unanimity, but if it is impossible to preserve it he must withdraw from it in view of his instructions.

Mr. Asser says that there are two distinct things: *personal vote* which we have already shown, and *compromise vote* which we are about to consider.

The full Commission has the right to know the stages through which we have passed. That done, as Mr. BOURGEOIS has pointed out, we shall join in a given solution for obtaining unanimity.

That cannot embarrass the German Government; it is on the contrary an act of courtesy to it.

The President thinks it would be useful to set forth clearly the conclusions to which this discussion has led. Met by the inflexible instructions of Dr. ZORN on the one hand, and by the necessity of unanimity on the other, he is ready to make all possible concessions, but it is not his duty to alter facts. Now these facts are as follows: 1. A considerable majority has already declared itself in

favor of the enumeration contained in Article 10; 2. To-day we are considering the second reading of Article 10, and all the members of the committee have the right to show their opinions. If these opinions are not changed it is natural that they should indicate it. The **PRESIDENT** asks permission to declare that, so far as he is concerned, if the French delegation has allied itself with the opinion of the new majority it is solely as a matter of compromise and not because it has changed its opinion. This declaration in no way implies that one side or the other should count upon laying their divergence of opinion before the Commission: the best guaranty against this peril is the spirit in which we are working; the perfect harmony which animates us, the existence of which has been proved in so many ways, leaves no fear upon this point.

Chevalier **Descamps** says doubtless all the members of the committee must consider their instructions, but they must also thank Dr. **ZORN** for the concessions which he has made to them.

His Excellency Sir **Julian Pauncefote** says that the German Government is perhaps not the only one opposed to Article 10.

Are not Austria and Italy of the same opinion?

His Excellency Count **Nigra** replies that he would wish, as does Mr. **BOURGEOIS**, that the enumeration of Article 10 were more extensive, and for that reason he will not vote for it.

Mr. **Holls** regrets that he does not agree with the **PRESIDENT**. He does not think it would be useful to vote again upon Article 10. We examined it upon the first reading, that was sufficient to establish opinions.

The American Government has approved his vote expressly, that is, it finds that the contents of this article are in reality of so little importance that its [58] retention cannot be allowed to weigh the balance against the inconvenience of a dissent between the great Powers represented in the committee. Under these conditions, we should not hesitate to sacrifice Article 10 to obtain unanimity.

The **President** accepts this view-point, provided, however, that the opinions of each one be stated in the minutes.

His Excellency Count **Nigra** agrees with this solution.

Jonkheer **van Karnebeek** insists upon the necessity of not giving a false impression. Why enter into the details of an enumeration?

The real question is the principle of obligation.

Germany cannot accept it; it is sufficient that her refusal be stated in the minutes and in the report, and that it be added that in the committee there was unanimous opinion in favor of Article 10 at the time of the first reading (except in the case of Dr. **ZORN**, who reserved his vote). Then it would not be necessary to redraft the article: it would be sufficient to state the concession.

Dr. **Zorn** recognizes that it is the right of each member of the committee to *vote* upon the second reading and to give the reasons for his vote. So far as he is concerned it will be satisfactory if the reporter explains that many members of the committee, although *in favor* of the principle of obligatory arbitration, have abandoned their idea in order to reach an agreement.

Mr. **Odier** declares that if the article were submitted to a vote upon the second reading, he would ask for the omission of Article 11 and certain modifications of Chapter II. With these reservations he is favorable to the principle and would vote for the retention of the article.

Sir **Julian Pauncefote** would have also voted for the retention of Article 10

subject to the reservation of certain modifications which he has already asked for upon the question of pecuniary claims.

**Mr. Martens:** The idea which made us decide to insert cases of obligatory arbitration in our plan is that *it is necessary to assist the practice of arbitration*, and in order to do that, to provide for certain possibilities, even of little importance, wherein Powers would agree to resort to arbitration necessarily. But since it is a question of preserving unanimity, Mr. MARTENS consents to the withdrawal of Articles 10 and 11 purely and simply.

**Mr. Lammasch** agrees with the views expressed by his Excellency Count NIGRA and Mr. HOLLS. As to whether it is necessary to vote upon Article 10 upon a second reading or simply to mention the declarations upon this subject in the report and minutes, he considers the latter process preferable. The latter will be sufficient in fact to protect our responsibility which has, however, already been cleared by our vote upon the first reading.

The **President** summarizes the discussion by saying that the vote which the committee is about to express will be taken under the conditions set forth above. Consequently, he puts to vote the compromise text of Chevalier DESCAMPS, a text accepted by Dr. ZORN, and beginning with these words: "Independently of general or private treaties, etc."<sup>1</sup>

This text, put to vote, is adopted replacing former Articles 8 to 12, and will become Article 5. Only six articles will remain in Chapter IV, "International arbitration." Article 6 will be the former Article 13: "With a view to developing the practice of arbitration, etc."

The committee before closing its work has only to decide upon the title to be given to the entire set of provisions worked out by it for the purpose of facilitating the peaceful settlement of international disputes.

After having discussed the following titles "International code of peace" (Mr. DESCAMPS), "Pacific settlement of international disputes" (Mr. ASSER), the committee adopts the following expression: "*Convention for the pacific settlement of international disputes.*"

Jonkheer van Karnebeek returns to the clause regarding accession and insists upon the necessity of settling this question.

**Mr. Martens** explains the formula which was suggested for the General Act; according to this formula the protocol will remain open until January 1 of the coming year. All adhesions will be notified to the Royal Government of the Netherlands which will give notice thereof to the interested parties after having made a note thereof. This duty is what the Federal Government now performs in the case of certain conventions.

It is preferable, Mr. MARTENS adds, to leave the question open so that the drafting committee may adopt a general formula applicable to all the conventions which result from the labors of the Conference.

Adopted.

The **President** does not want to let the committee close its work without expressing his thanks and congratulations for the activity and spirit of conciliation which have made his task so much easier, and assured its final success.

On the motion of his Excellency Count Nigra, the committee expresses [59] its thanks to the PRESIDENT for the services which he has rendered in accepting the duty of directing their labors. Unanimous votes of thanks

<sup>1</sup> See the text inserted above, p. 768.

are also given to Chevalier DESCAMPS, reporter for the committee, Baron D'ESTOURNELLES DE CONSTANT who took charge of the minutes, and Mr. JAROUSSE DE SILLAC, assistant secretary.

The meeting adjourns.<sup>1</sup>

<sup>1</sup> After this last meeting it was decided that the "*Draft Convention for the pacific settlement of international disputes*" should be printed and distributed in proof, to the members of the Third Commission in order to permit them to study it at their leisure, to consult their Governments, and to formulate, as far as possible, their observations before the committee before the meeting of the Third Commission. In order to hear these observations, and to take any measures pursuant thereto, the committee will hold, if necessary, one or several special meetings (see meetings 15, 16, 17 and 18).

# FIFTEENTH MEETING

(First Special Meeting)

JULY 15, 1899 <sup>1</sup>

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Chevalier Descamps presiding.

The President reminds the committee that the "*Draft Convention for the pacific settlement of international disputes*" <sup>2</sup> was submitted in the form of proof to all the members of the Third Commission and that the latter were invited to communicate their views to Baron d'ESTOURNELLES DE CONSTANT. Memoranda or amendments have in this way been presented by Baron BILDT, Messrs. d'ORNELLAS VASCONCELLOS, ROLIN and STANCIOFF. The PRESIDENT has inspected these texts and will communicate the substance thereof as the reading progresses when the article covered thereby is presented. He expresses his sincere thanks to Mr. RENAULT who has kindly volunteered his assistance in drafting certain texts.

## Examination, Upon the Third Reading, of the Draft "Convention for the Pacific Settlement of International Disputes" <sup>3</sup>

The President proceeds to read the Articles of the "Draft Convention" to which modifications are requested, and amendments by various members of the Third Commission.

### ARTICLE 1

An exchange of views takes place between Messrs. Chevalier DESCAMPS, MARTENS, LAMMASCH, ASSER and Count NIGRA regarding the draft of Article 1, (third line). In place of the expression "*to bring about by peaceful means the settlement of international differences*," it is agreed to substitute, "*with a view to the peaceful settlement of international differences*."

[60] Mr. RENAULT suggests the substitution of the word "never" for the words "not at all" (third line of Article 6).

Adopted.

### ARTICLES 7 and 8

The PRESIDENT communicates the amendment proposed by Mr. d'ORNELLAS

<sup>1</sup> Hall of the Truce. Present: His Excellency Mr. STAAL, *president of the Conference*; Jonkheer van KARNEBEEK, *vice president of the Conference*; his Excellency Count NIGRA, *honorary president of the Third Commission*; Messrs. ASSER, Baron d'ESTOURNELLES DE CONSTANT, HOLLS, LAMMASCH, MARTENS, ODIER, Dr. ZORN, *members of the committee of examination*. Present at the meeting: Messrs. Baron BILDT, Sir HENRY HOWARD, RENAULT, ROLIN.

<sup>2</sup> Annex 10.

<sup>3</sup> See annex 10.



VASCONCELLOS concerning Articles 7 and 8: the delegate from Portugal thinks that the general principle of Article 7 should also imply special mediation. He suggests the inversion of the order of Articles 7 and 8, the present Article 7 then to commence with these words: "*Mediation, even special, cannot have the effect, etc.*"

The committee decides that Article 7 concerning the effect of mediation is applicable to the special mediation of Article 8 and that this interpretation indicated by Mr. D'ORNELLAS shall be mentioned in the minutes.

#### ARTICLE 9

With regard to Article 9 (International commissions of inquiry) Mr. d'Ornellas Vasconcellos proposes to write "*circumstances of fact*" instead of "*local circumstances*." He also believes that since verification of facts can never offend the honor or vital interests of States, there is reason for the omission of the words: "*and furthermore not involving the honor or vital interests of the interested parties.*"

Mr. Asser supports the first remark of Mr. D'ORNELLAS. He had already pointed out<sup>1</sup> that the words "local circumstances" were too restricted. To settle a dispute between two countries it may be useful to examine impartially circumstances other than local circumstances: commissions of inquiry should not be limited in their work of investigation and satisfaction by such form. He furthermore proposes to omit the words "on the spot." There are certain facts which cannot be cleared up on the spot: for example, some fact which might have occurred on the high seas.

Mr. Lammasch requests the retention of the words "*which may be verified by local examination.*" Without this precaution, commissions of inquiry would have an unlimited field of action and it is necessary to define their jurisdiction exactly.

Baron Bildt remarks that the text of the draft Convention has already been submitted to the Governments and it should be changed as little as possible in order that it may not be necessary to ask for new instructions without grave necessity therefor.

The committee adopts the first proposition of Mr. D'ORNELLAS and that of Mr. ASSER.

As to the second proposition of Mr. D'ORNELLAS (omission of the words "honor and vital interests"), Baron d'Estournelles thinks it is inopportune to omit these words. Several delegates have already made known to him objections which they intend to draw up against Article 9 because they do not find sufficient guaranties therein. It was with a view to meet these ideas that Mr. STANCIOFF had proposed to add a third guaranty providing "*if the Powers find it advantageous*"; in any case even if we do not increase the number of guaranties, we must not diminish them.

The committee shares this view, and Mr. D'ORNELLAS does not insist upon this point.

#### ARTICLES 16 and 17

Baron Bildt proposes to omit both Articles 16 and 17. Article 16 appears to be *superfluous*, even *injurious*. Why insert a right which all the world already possesses, and why sanction things which are evident?

<sup>1</sup> See *ante*, p. 727.

As for Article 17, it sets forth a great axiom. In any case, it should be affirmed only incidentally. This is done in Article 30.

Chevalier **Descamps** defends these articles. Article 16 reproduces Article 3 of the original code of arbitration and this article did not seem useless to the committee. We must remember in fact that binding agreements duly entered into are not the only ones which should be pointed out. It is well to recall the different kinds of arbitral conventions. These conventions differ in kind accordingly as they involve existing disputes or future controversies, a certain category of suits or all possible suits. It is not vain to recall these differences.

His Excellency Count **Nigra** endorses these remarks. It is well to be able to make arbitral conventions in *theory*, so to speak, even when we foresee that they will have few chances of application. It is well to have clear ideas as to their scope.

Mr. **Lammasch** says that Articles 16 and 17 state truths which it is worth while to emphasize. Would it not raise doubts as to the opinion of the committee concerning them if we should omit reference to them?

[61] Besides, our work has to point out with as much exactness as possible the way in which we hope that the law will develop.

Baron **Bildt** proposes the omission at least of the words "*in good faith*" in Article 17. We should not presuppose bad faith on the part of Governments. In ordinary treaties we never mention such a thing. Why do it here?

Mr. **Martens** replies that the words "*good faith*" are here equivalent to the Latin expression *bona fide*. It is a technical term adopted in all ages in private contracts as well as in international contracts.

His Excellency Count **Nigra** observes that the Roman law always employs this formula.

## ARTICLE 20

Dr. **Zorn** expresses his views regarding Article 20 in the following terms:

After making concessions which it believes are very important and which it could make only by overcoming grave and serious objections, the German Government has no intention of changing its point of view with regard to the plan for arbitration. However, it seems to that Government that the terminology of the draft does not clearly and precisely express the ideas upon which the committee reached an agreement, and to which the German Government consented.

The word "Court" is applied:

1. To the whole institution of permanent arbitration.
2. To the assembly of arbitrators formed under the authority of this institution, except that such assembly is designated as a "tribunal" if it is formed under the terms of a special convention.

This might bring about a certain confusion. In a special case we may give to an assembly of arbitrators the name of court or tribunal, but the entire institution should never be called either a court or a tribunal because it has no function of arbitration procedure to perform. Outside of the Bureau which has not and should not have any other powers than those belonging to a secretarial staff, *there exists only a list, the members of which do not exercise their duties except after having been selected for a particular case.* The name of court or tribunal given to the entire collection of these members would not therefore be justified. In order not to give rise to deception and misunderstandings we

should consequently modify the terminology of the draft and specially eliminate the words "Court of Arbitration" so far as the entire institution is concerned.

Chevalier **Descamps** replies to Dr. **ZORN**, saying that he would be very sorry, looking at the moral effect of the matter, to renounce this title "Permanent Court" already adopted and perfectly justifiable in certain respects. In order to avoid misunderstanding we might call the particular organization which is on the point of rendering justice the *arbitral court*.

Mr. **Holls** does not sufficiently understand all of the shades of speech in the French language to defend the word "court," but he can assert that the English word "court" corresponds exactly to what the committee of examination has just established. The Supreme Court of New York comprises a certain number of judges who have never been called together at one time. These judges are elected in different districts and divided among these districts by the "Appeal Division"—a special tribunal named by the Governor. Naturally each of these judges must continue the performance of his duties during an entire year—if the legal work is of sufficient importance—but there is no fundamental regulation which forces the Appeal Division necessarily to designate a judge. The Court possesses a general seal and an individual secretary in each county. Several characteristics of European courts which do not appear in our projected court of arbitration are also lacking in the Supreme Court of New York, but an American would scarcely understand the objections which might be made to the word "court" as the designation of such an organization.

Mr. **Asser** recalls the fact that he had at first adopted the title "Permanent Tribunal of Arbitration," and that we substituted therein the word "Court" as the result of remarks made on behalf of the German Government. While not thinking that the terminology is perfect he proposes that it be retained in default of a better, and to keep the word *Court* to designate the entire institution, and the word *Tribunal*, the meeting of arbitrators chosen from the list and ready to decide a case.

Mr. **d'Estournelles** endorses the opinion of Mr. **ASSER**.

Mr. **Lammasch** thinks that the German objection arises especially from the fact that we employ the same expression to designate two different things, that is, the entire court and the different divisions of this court. He thinks that we might write *Tribunal* in place of *Court* in Article 14 and make the opposite change in Article 28.

Dr. **Zorn** replies to Mr. **DESCAMPS** that it is preferable to avoid false terms; we should not permit ourselves to be charmed by a word which does not accord with the truth. The creation of a permanent international institution for arbitration loses nothing of its great value if we give it a name which is more modest and in any case more correct. As to the objections made that we [62] could not find a designation which would be entirely correct, it must be said in reply that this would not be difficult; we might say for example "the permanent organization for arbitration" or "the permanent list of arbitrators."

The observations of Mr. **HOLLS** regarding the Supreme Court of the State of New York whose members do not meet together, and have no permanent functions, were of great interest to him.

But, there is a great difference between a national institution based upon internal legislation, and an international institution created by a convention between several States.

The "Supreme Court of the State of New York" although it does not meet

is, however, a unit, an authority; the so-called "Permanent Court of Arbitration" does not have this character; *it furnishes only the elements from which, when the time arrives, several may be called to form an arbitral tribunal.* In any case, Dr. ZORN requests that these objections by the German Government be set forth in the minutes in order to reserve to his Government the power to apply the terminology which may seem most correct to it when making the German translation of the text of the Convention.

Mr. **Martens** calls attention to the fact that the words *Permanent Court* and *Arbitral Tribunal* conform to the practice followed in France, England and the United States.

#### ARTICLE 23

Regarding Article 23 Mr. **Asser** asks whether we could not point out that the appointment of the judges may always be revoked, even before the expiration of the term of six years.

Chevalier **Descamps** replies that it is dangerous to point out this right. And it is better not to insist upon it. If there is a serious and obvious case for the exercise of revocation we shall know how to consider it. We should not in this provision threaten the principle of continuous tenure.

#### ARTICLE 24

Mr. **Rolin** proposes an amendment which has a three-fold object: 1. to make clear that the arbitrators who are intended to form a tribunal in actual operation, can only be selected from the general list; 2. to point out the transition from the idea of "permanent court" to that of "arbitration tribunal" and thus avoid ambiguity; 3. to prevent notification being given to the Bureau before all of the arbitrators have been selected.

After an exchange of views and as a result thereof, the committee adopts the following draft, subject to future examination should there be any reason therefor:

*The signatory Powers which wish to have recourse to the Court for the settlement of a difference that has arisen between them, choose from the general list of members of the Court the arbitrators to be named.*

*In default of an agreement to the contrary the arbitrators are named in accordance with the rules fixed by Article 31 of the present Convention.*

*The Parties notify to the Bureau their determination to have recourse to the Court and the names of the arbitrators.*

*The tribunal of arbitration assembles on the date fixed by the Parties.*

#### ARTICLE 25

Baron **Bildt** requests that this article be omitted. There is, it is true, a certain conflict between this article and Article 35. The latter provides that as a general rule the meeting place of the tribunal is designated by the parties and that as an exception it will meet at The Hague. He proposes not to speak of the meeting place of the tribunal except in Article 35 and consequently to omit Article 25.

Mr. **Asser** replies that the situations contemplated by these two articles are entirely different: in Article 25 we are talking of the *Permanent Court*, while in Article 35 it is a question of a *special arbitration*. In the latter case the rule is naturally that the meeting place should be selected by the parties. On the con-

trary in case of the Permanent Court and in Article 25 it is very natural that The Hague should be the ordinary meeting place of the arbitral tribunal.

The committee decides to make the following simple modification to Article 25: "The tribunal of arbitration" in place of "The Court."

#### ARTICLE 27

With regard to the draft of this article, Mr. **Rolin** observes that if we recognize a *new duty* of nations, we cannot presuppose that one or more [63] of them will fail to perform it. That, however, is just what would occur if we retained the present text of paragraph 2 of Article 27. He therefore proposes to omit the words "*by one or more of them.*"

Adopted.

Mr. **Stancioff** asks whether it would not be necessary to provide in advance a practical means for reminding Powers that a permanent court exists. He is heartily in accord with those who wish to impose this *new duty* upon Governments. He believes with them that Article 27 happily expresses the sense of the entire work, that is, that a new era is beginning wherein the idea of the inter-responsibility of nations will become clearer and clearer. But in order to hasten this development, he thinks it would be necessary to indicate a *practical method*, a mechanical arrangement, which would permit States to fulfill their duty with security and rapidity.

If we do not wish to entangle diplomacy with this question, what plan should we follow? If we employ the Bureau, the procedure to be followed might perhaps be too long—the countries which desired to call the attention of the disputing parties to the existence of a court of arbitration must first address the Bureau. The latter must deliberate over the matter and then confer with the two litigants. That will require time and the conflict might break out before the *reminder* had been transmitted. Therefore we must find a more effective and more rapid means to enable States to fulfill the duty proclaimed in Article 27.

The committee thanks Mr. **STANCIOFF** for his observations, the subject of which has already been discussed.<sup>1</sup>

#### ARTICLE 28

Baron **Bildt** observes that if the Permanent Council is composed of the diplomatic representatives of the signatory Powers residing at The Hague, as provided in Article 28, certain Powers will not be represented in this Council, for example, Sweden and Norway the representative of which *accredited* to The Hague *resides* in Brussels. He therefore asks that the word "*accredited*" be substituted for the word "*residing*."

Mr. **d'Estournelles** opposes this proposal.

The **President** puts it to vote.

The vote is:

**Ayes:** His Excellency Count **NIGRA**, His Excellency Mr. **STAAL**, Chevalier **DESCAMPS**, Mr. **ASSER**, Mr. **HOLLS**.

**Nays:** Mr. **LAMMASCH**, Dr. **ZORN**, Sir **HENRY HOWARD**, Baron **d'ESTOURNELLES**.

Consequently the substitution proposed by Baron **BILDT** is adopted. It is

<sup>1</sup> See minutes of the thirteenth meeting.

also agreed that the diplomatists should select a domicile at The Hague where all communications — especially notices of meetings — should be addressed to them. This observation should be mentioned in the minutes.

The committee decides that the president reporter shall examine Articles 29 to 56, in the presence of the interested parties who have proposed amendments thereto and that he shall submit the proposed modifications to the Third Commission, the plenary session of which will occur next Monday, July 17, at 10 o'clock.

The meeting adjourns.

## SIXTEENTH MEETING

*(Second Special Meeting)*JULY 18, 1899<sup>1</sup>

Mr. **Léon Bourgeois** presiding.

The **President** reminds the committee that it has to examine the questions raised yesterday in the Third Commission in order to decide upon the compromise proposals for to-morrow.

### General Discussion Concerning "International Commissions of Inquiry"<sup>2</sup>

**Jonkheer van Karnebeek** makes reservations: he declares that he has not yet received instructions from his Government regarding inquiries, but that these instructions cannot be favorable.

**Mr. Rolin** would agree to vote for the chapter regarding inquiries, but he considers these commissions as a preparatory measure to arbitration. He asks that this declaration be noted in the minutes.

**Mr. Martens** replies that these commissions of inquiry are not necessarily a prelude to arbitration. We should note that the procedure is *voluntary*, and consequently there is no disadvantage in the interpretation given by the delegate from Siam.

**Mr. Odier** makes the same reservations as **Mr. van Karnebeek** so far as final instructions from his Government are concerned.

**Mr. Holls** is of the opinion that it would be better to be content with *recommending* commissions of inquiry; that would be simpler.

His Excellency **Count Nigra**: Would it not be better to make a separate convention?

**Mr. Lammasch** recalls that he has already asked that we limit ourselves to *recommending* commissions of inquiry.

He has given consideration to the arguments of **Mr. Martens**, but since then the principle of obligation seems to have met with serious obstacles. A discussion in the commission is to be feared. They will ask for the omission of Article 9 entirely, and thus imperil the whole institution. Would it not be

<sup>1</sup> Hall of the Truce. Present: His Excellency **Mr. STAAL**, *president of the Conference*; **Mr. Jonkheer van Karnebeek**, *vice president of the Conference*; their Excellencies **Count Nigra**, **Sir Julian Pauncefoot**, *honorary presidents of the Third Commission*; **Chevalier Descamps**, *president and reporter*; **Messrs. Asser**, **Baron d'Estournelles de Constant**, **Holls**, **Lammasch**, **Martens**, **Odier**, **Dr. Zorn**, *members of the committee of examination*. Present at the meeting: **Messrs. Baron Bildt**, **Count de Macedo**, **Renault**, **Rolin**.

<sup>2</sup> See eighth and thirteenth meetings.

better to make the sacrifice and omit the word *obligation* in the only article in the Convention where it still exists?

Mr. **Martens** objects that this is not the only article which provides for an obligation. Articles 1, 21 and others imply also a binding agreement.

However, if there is no possibility of having the text as it exists adopted, then he will accept the sacrifice and renounce the obligation. Up to the present time he has simply heard fears expressed, but nothing more.

So that perhaps there is only a misunderstanding.

These words, "if circumstances allow" furnish every guaranty.

Mr. **Holls** states that his Government has approved Article 9 as it is, and that he can sign it, but he desires that in the report it be explained that a commission of inquiry is not a form of arbitration. There is nothing in its operations which might be called "judicial." The parties are not represented by lawyers and members of the commission are not judges but simply investigators.

[65] **Jonkheer van Karnebeek** says these inquiries may be dangerous and embarrassing under certain circumstances, notably in the case of colonies.

In replying to a question by the **PRESIDENT**, **Chevalier Descamps** says that the words "vital interests and national honor" are no longer found in Article 9 after having appeared originally in several parts of the Convention. This phrase is therefore "evidence of a former state" as the geologists say.

**Chevalier Descamps** adds that in case of facts which have been wrongly interpreted there is ground for ascertaining their materiality. This is what commissions of inquiry are for. They do not consider the matter in dispute. They elucidate points of fact. Now if we are seeking a weaker phraseology it would not seem difficult to find it.

Mr. **d'Estournelles** says that he has received statements of the impressions of every one during the interval of ten days which has elapsed before to-day's session, and, whether rightly or wrongly, commissions of inquiry are raising lively opposition. It is a question of fact.

Delegates who are apprehensive of inquiries in the case of their countries in reality produce not arguments but fears, and it is that which prevents us from convincing them. Their fears are both moral and material. They fear first that the *amour propre* of their country will be offended; commissions of inquiry will reveal defects of administration, and humiliation for them will follow, and they fear it. Furthermore they fear that following these revelations pressure of public opinion will be brought to bear upon them (the delegates). There is therefore a sort of international coalition formed among States which are more or less badly administered; it is again a battle of darkness against light, but that is why we shall experience difficulty in defeating the opposition to us; we must reach our decision and make concessions to attain our purpose.

Mr. **Martens**: I conceive that the States to which Mr. **d'ESTOURNELLES** has alluded fear that their defects of administration may be revealed, but they cannot delude themselves and we must know that whatever we write into our act these inquiries will always take place.

Mr. **d'Estournelles**: They do not desire to have them become customary.

Mr. **Odier**: Here is still an objection. They fear that this first act will be the forerunner of a series of acts which will bind the signatories to a greater or lesser extent.

They fear that obligatory *international commissions of inquiry* will be taken



as a pretext, so that the Power which is right on the facts may morally compel the Power which is wrong, especially if the latter is weak, to resort to arbitration, which will by that very fact be made obligatory.

Mr. **Lammasch** made his proposal with a view to avoiding troublesome debates to-morrow and to try to obtain unanimity to-day.

Article 1 contains the word "agree" and Article 20 contains the word "undertake": in any manner the undertaking is limited and the undertaking of Article 9 seems more strict and to have a special character.

Dr. **Zorn** has no objection to Article 9, because he believes that the text of this article does not imply the principle of obligatory arbitration; but if there is any danger of provoking a troublesome debate upon the subject during the rest of our deliberations, he aligns himself with the conciliatory opinion of Mr. **LAMMASCH**, and proposes with him to admit that commissions of inquiry are purely voluntary.

Mr. **MARTENS**, he hopes, will join this compromise movement.

It must be recognized that international commissions of inquiry have very different degrees of importance depending upon whether a large or a small Power is involved. For a small Power they may be dangerous when they are not so for a large Power.

Mr. **Asser** points out a new objection to commissions of inquiry. Certain delegates of countries which are well administered fear them too for entirely different reasons. Mr. **ODIER** said that an international commission of inquiry would lead to arbitration. Now I have heard the contrary stated, that it would prevent arbitration.

If the result of the inquiry is not favorable to a great Power in conflict with a small Power then the great Power will not desire arbitration.

Under these conditions, as any one may see, it will have to make a sacrifice.

Certain Powers will be willing to sign only a part of the Convention, others will sign under reservations — this result will not be satisfactory. It will be better to resign ourselves to declaring that it is *voluntary*.

The **President** summarizes the discussion: the personal sentiments of the members of the committee have not changed, but we foresee the opposition of several Powers in the Commission and we desire above all that the entire draft shall not be compromised. That being clearly stated, nothing prevents each one of us, however, from being allowed to set forth an opinion in the [66] meeting to-morrow; that will be a good time to test it out and we shall not give way until the last moment after having produced an interchange of ideas which will not be in vain and which will in any case instruct public opinion upon the motives of both sides; let us therefore await the discussion and reserve to ourselves the decision to support the amendment of Mr. **LAMMASCH** if it is necessary.

Mr. **Martens** adopts the ideas expressed by the **PRESIDENT**. He will be happy to be supported in this battle and at the desired time, he says, we will unite upon the idea of compromise, while remaining convinced that the cause is good.

Mr. **Lammasch** also supports this view. He proposed his amendment to-day only to prevent a discussion which might have become troublesome. But since the committee is so unanimous in its feeling and so resolute as to the plan to be followed, he rather hopes that the discussion will take place.

The committee unanimously accepts the method of procedure suggested by the **PRESIDENT**.

**Examination, Upon Its Third Reading, of the "Draft of Convention for the Pacific Settlement of International Disputes" (Continued)**<sup>1</sup>

The **President** reads the articles to which amendments have been presented:

**ARTICLE 21**

**DE MACEDO** amendment:

Notwithstanding and in case of an agreement upon the simple fact of recourse to arbitration, the signatory Powers have agreed to prefer the jurisdiction of the Permanent Court to any other special jurisdiction whenever circumstances will permit.

Count **de Macedo** declares that his intention is to give more force and vigor to this new institution of arbitration, to make the use of the Permanent Court the *rule* and special courts the exception.

**Mr. Renault:** Article 21 already sets forth this idea that resort to the Permanent Court is the rule and resort to a special court, the exception.

Count **de Macedo** prefers that this idea be more specifically set forth and that it be well understood that resort to a special court is really an *exception*. It will almost be necessary to state reasons for following the exception, or at least the necessity of stating such reasons may gradually become customary.

Count **Nigra** is not of the same opinion as Count **DE MACEDO**. The rule is the bilateral convention of arbitration, and the Permanent Court is the exception, the special mode of arbitration. Furthermore Article 21 which states to the contrary seems to him to be badly drawn up.

**Dr. Zorn** has no objection to the amendment of Count **DE MACEDO**, but it seems to him superfluous. He agrees with **Mr. Renault** in thinking that the Permanent Court is the rule, the conventional rule — according to Article 21 — and special arbitration the exception. The word "unless" constitutes the exception. He hopes, as does Count **DE MACEDO**, that the use of the Permanent Court will be the rule, but he thinks that his amendment is not necessary.

Count **de Macedo:** The Permanent Court is the rule **Dr. Zorn** says, the exception is permitted. He desires that this exception be less *frequent* by morally requiring a sort of statement of the reason therefor.

**Mr. Holls** appreciates very much the idea of Count **DE MACEDO**, but he thinks it would perhaps be embarrassing to emphasize this idea that resort should be had to the Permanent Court. That might perhaps allow opinion to exercise pressure upon Governments.

**Mr. Asser** believes that the objection of **Mr. Renault** is well founded. Count **DE MACEDO** proposes that in all cases where resort is had to arbitration recourse shall be had to the Permanent Court except under certain circumstances. It would therefore be necessary to say: The contracting Powers recommend that reference be had to the Permanent Court in every case where circumstances permit.

Count **de Macedo** supports this text.

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The **President** summarizes the discussion: the personal sentiments of the members of the committee have not changed, but we foresee the opposition of several Powers in the Commission and we desire above all that the entire draft shall not be compromised. That being clearly stated, nothing prevents each one of us, however, from being allowed to set forth an opinion in the [66] meeting to-morrow; that will be a good time to test it out and we shall not give way until the last moment after having produced an interchange of ideas which will not be in vain and which will in any case instruct public opinion upon the motives of both sides; let us therefore await the discussion and reserve to ourselves the decision to support the amendment of Mr. **LAMMASCH** if it is necessary.

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Mr. **Lammasch** also supports this view. He proposed his amendment to-day only to prevent a discussion which might have become troublesome. But since the committee is so unanimous in its feeling and so resolute as to the plan to be followed, he rather hopes that the discussion will take place.

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Count **de Macedo** prefers that this idea be more specifically set forth and that it be well understood that resort to a special court is really an *exception*. It will almost be necessary to state reasons for following the exception, or at least the necessity of stating such reasons may gradually become customary.

Count **Nigra** is not of the same opinion as Count **DE MACEDO**. The rule is the bilateral convention of arbitration, and the Permanent Court is the exception, the special mode of arbitration. Furthermore Article 21 which states to the contrary seems to him to be badly drawn up.

**Dr. Zorn** has no objection to the amendment of Count **DE MACEDO**, but it seems to him superfluous. He agrees with **Mr. Renault** in thinking that the Permanent Court is the rule, the conventional rule — according to Article 21 — and special arbitration the exception. The word "unless" constitutes the exception. He hopes, as does Count **DE MACEDO**, that the use of the Permanent Court will be the rule, but he thinks that his amendment is not necessary.

Count **de Macedo:** The Permanent Court is the rule **Dr. Zorn** says, the exception is permitted. He desires that this exception be less *frequent* by morally requiring a sort of statement of the reason therefor.

**Mr. Holls** appreciates very much the idea of Count **DE MACEDO**, but he thinks it would perhaps be embarrassing to emphasize this idea that resort should be had to the Permanent Court. That might perhaps allow opinion to exercise pressure upon Governments.

**Mr. Asser** believes that the objection of **Mr. Renault** is well founded. Count **DE MACEDO** proposes that in all cases where resort is had to arbitration recourse shall be had to the Permanent Court except under certain circumstances. It would therefore be necessary to say: The contracting Powers recommend that reference be had to the Permanent Court in every case where circumstances permit.

Count **de Macedo** supports this text.

<sup>1</sup> See annex 10.

Chevalier **Descamps** says that what is most significant to him in Article 21 is the fact that it definitely requires that the Permanent Court shall be considered the rule.

COUNT DE MACEDO's amendment for its part provides but one thing: prefer the rule to the exception. Chevalier **DESCAMPS** thinks that the amendment [67] might be interpreted by certain States as a kind of pressure exercised in favor of the Permanent Court. If the amendment were necessary we might consider means for introducing it, but Article 21 is quite sufficient to set forth the same idea without insisting thereon more than is proper, and running the risk of causing irritation thereby.

Mr. **Rolin** says that it seems to him that the purpose the Third Commission has in view is to favor *resort to arbitration*. The Permanent Court is only a means. Any amendment which would favor the jurisdiction of the Permanent Court at the risk of restricting the very use of arbitration is dangerous. We would be morally obliged, says COUNT DE MACEDO, to have recourse to the Court.

That might embarrass States and prevent them finally from using arbitration.

The **President** puts to vote the **ASSER** text: "*the signatory Powers are agreed to have recourse, etc.*"

The following voted against it: Messrs. **ODIER**, **DESCAMPS**, **ZORN**, **LAM-MASCH** and **HOLLS**.

The amendment is not adopted, but Mr. **MARTENS** thinks that in the minutes and the report we might make note of the idea of COUNT DE MACEDO with which he sympathizes. COUNT **NIGRA**, Mr. **HOLLS** and COUNT DE MACEDO accept this point of view.

The **President**: Mention thereof shall be made in the minutes.

## ARTICLE 22

Mr. **Renault** says with reference to the fourth paragraph the words: "rendered with regard to them" are meaningless. He proposed: "*any award concerning them, delivered by means of a special tribunal.*"

Adopted.

Dr. **Zorn**: The words "secretary general" were stricken out upon the **EYSCHEN** motion, but the German Government desires that the secretarial staff shall remain secretarial. It is of little importance what name is given to the head thereof, but the German Government is anxious that the secretariat shall not become a center of international politics, a sort of cosmopolitan Bureau.

## ARTICLE 23

COUNT **de Macedo** requested that the number 4 be reduced to 2.

He wishes to see the Permanent Court respected and deferred to. The members should not be, so to speak, merely honorary appointees chosen at haphazard.

Jonkheer **van Karnebeek** does not agree with this opinion. Since the fortunate addition of Article 27, I have been, he says, in favor of the number 4 in order that in addition to lawyers there may be put in diplomatists and men able to decide political questions.

Mr. **Martens** recalls the history of this article: Sir **JULIAN PAUNCEFOTE** had proposed the number 2. Upon the motion of Dr. **ZORN** we adopted the

number 4. His opinion has remained the same. A small number would be worth more because the moral authority of each would be greater. If the Governments can choose only two members, they will give greater attention to their selection. Among 4 persons we may find some who may not be equal to their duties.

Everybody will name 4 and especially all Powers which perhaps should only name 1.

There will be a large number of persons recommended, but perhaps few who can be recommended.

The fewer the number of arbitrators designated the more authority they will have, and the more responsibility Governments will have for their selection.

On the other hand, Mr. MARTENS cannot join in the remarks made by Jonkheer VAN KARNEBEEK that the Bureau or the Court shall have political functions. Neither the Court nor the Council nor the Bureau have anything to do with politics.

It has also been said there must be technical, military, legal and engineer arbitrators, but all the specialists may be summoned as experts before an arbitral tribunal.

Dr. Zorn: The authority of the Court will not be lessened if the number of judges is greater, perhaps there will be one hundred names. This is not too many for the Permanent Court speaking for the entire world. The opinion of the German Government is that there must be above all things lawyers on this list, but it is also necessary to have diplomatists and perhaps technical arbitrators. He thinks too that if Article 27 has added no political attribute to the Court, it nevertheless gives it an importance which may extend beyond the field of the lawyer.

Mr. Asser is of the same opinion as Messrs. MARTENS and DESCAMPS, but he thinks that we cannot go back upon what has already been decided.

[68] Count de Macedo is ready not to insist upon his amendment whenever there is a complete disagreement upon this point, and if Dr. ZORN thinks that there is an irrevocable objection on the part of the German Government.

Chevalier Descamps: If Count DE MACEDO does not insist we may limit ourselves to a statement in the report that this amendment meets with the support of all opinions except one and that we give way only because of necessity.

Adopted.

The President calls attention to the amendment of Count DE GRELLE ROGIER regarding diplomatic immunities of arbitrators.<sup>1</sup>

Jonkheer van Karnebeek: It is not admissible that Netherland subjects should enjoy diplomatic immunities in the Netherlands. They would escape from all jurisdiction, and he proposes to add these words after the word "enjoy": "*So far as they do not belong to the country in which the tribunal is sitting.*"

Mr. Renault: The question arose in France in 1876; a Frenchman represented a foreign country in Paris. He was prosecuted, the Court of Paris decided that this Frenchman enjoyed diplomatic immunity in France — from the time that he was accredited.

Mr. Asser — in spite of the respect which he has for the opinion of Mr. RENAULT and of the Court of Paris — thinks that extritoriality is, as to a person, a right which belongs to this person to be considered when living abroad

<sup>1</sup> See Third Commission, fifth meeting, July 17.

as being in his own country; therefore a Netherlander named as arbitrator would not escape from the control of his country.

Chevalier **Descamps** thinks that Mr. **ASSE**r is relying too much upon a rule of secondary importance: *extritoriality*. This is a formula which was invented to make tangible the privilege of *inviolability*. Do you admit that a Netherland judge may search the residence of an international arbitrator? The question is a delicate one. As for other immunities, such as those concerning taxation and duties, the point of view may be different.

His Excellency Count **Nigra** thinks that it will be necessary to restrict the immunities of judges to personal inviolability.

Mr. **Martens**: This discussion shows that we are not in agreement ourselves. We must therefore state that a subject may not have diplomatic immunity in his own country. In 1868 an American was named ambassador from China at Washington with the restriction that he should not have diplomatic immunities within the territory of the United States. It is an absolute principle that a person is not extritorial in his own country. But to be exact we might say "except in his country."

Adopted.

#### ARTICLE 24

ROLIN amendment:

In default of a provision to the contrary these arbitrators are designated in accordance with the rules fixed by Article 31 of the present Convention.

They notify to the Bureau their determination, . . . designated.<sup>1</sup>

Mr. **Rolin** sets forth the reasons for his amendment; he explains that the parties should *notify* to the Bureau the complete list of the tribunal, arbitrators and umpires.

1. The first draft would in fact permit notification of the formation of the tribunal before it should be entirely made up.

2. Mr. **ROLIN** desired to point out the *origin* of the arbitral tribunal, the character of which is not yet known when it is mentioned in Article 24.

The remainder is a matter of mere phraseology.

Jonkheer **van Karnebeek** asks whether the committee desires that the Bureau should have no part in the constitution of the tribunal.

*Unanimous response*: None.

Jonkheer **VAN KARNEBEEK** remarks that then it will be necessary to change the wording of Article 24.

Chevalier **Descamps** opposes the amendment of Mr. **ROLIN** and his text thus drawn up: "arbitrators destined to form the arbitral tribunal." He is not sure that they alone will constitute it.

Mr. **Holls**: We must clear up this question of notification of the choice of umpire. It is very important to adopt a text on that point which will permit the rejection of the proposition providing for challenging the umpire (**BILDT** proposal).

The very basis of our institution is the idea that the tribunal shall give complete satisfaction to the two parties. We must therefore in fact reserve to the litigants the right, the possibility of challenging one of the arbitrators. If we decide that notification shall be made before this choice is agreed upon, then we shall open the door to the request of Mr. **BILDT**.

<sup>1</sup> See below.

Arbitrators have a double rôle. They are (1) arbitrators; (2) electors. They should fulfill these two rôles and there must be a sanction for their doing so.

[69] **Chevalier Descamps:** Let us place paragraph 3 in place of paragraph 2. After the tribunal has been formed, then will come the *notification*. **Mr. Rolin** insists upon his amendment thus modified:

The arbitrators intended to constitute the arbitral tribunal for the settlement of a difference that has arisen between the signatory Powers which wish to have recourse to the Court, are chosen from the general list of the arbitrators of the Court.

The committee of examination agrees upon this point: a general tribunal of arbitration is composed solely of arbitrators chosen from the list.

The **President:** **Chevalier Descamps** is authorized to find a text from which he may take the last three paragraphs of Article 31 and incorporate them herein.

#### ARTICLE 26

**RENAULT** amendment:

A non-signatory Power cannot resort to the jurisdiction of the Court without having concluded a preliminary arbitration agreement between it and the adverse Power.

**Mr. Asser** supports this formula and proposes this phraseology:

The international Court may be called upon to pass upon a dispute between non-signatory Powers or between a signatory Power and a non-signatory Power if the two parties have agreed to have recourse to it.

**Mr. Renault** proposes to draw up paragraph 2 of Article 26 as follows:

The Permanent Court may be called upon, under the conditions prescribed by the present Convention, to pass upon a controversy existing even between non-signatory Powers or between a signatory Power and a non-signatory Power if the parties have agreed to have recourse to this Court.

Finally, after a discussion bearing upon the question of phraseology the following form is agreed upon:

The jurisdiction of the Court may be extended, under the conditions prescribed by the present Convention, to disputes existing between two signatory Powers or between a signatory Power and a non-signatory Power, if the parties have agreed to have recourse to this Court.

#### ARTICLE 27

**Mr. Martens** informs the committee that certain delegates have asked him to substitute the words "recognize it as useful" for these "consider it their duty."

#### ARTICLE 28

**Jonkheer van Karnebeek:** It seemed to the Netherland Government that six Powers was too small a number, 10 would be preferable as a minimum.

The number 9 proposed by His Excellency Count NIGRA is adopted, it being the number adopted by the American draft.

**Mr. Martens:** We have formed a Permanent Court and an epitome of the



court which is *the bureau*. In saying *Court* we embrace all the organs belonging to our institution: bureau, court, publication (bulletin of the Permanent Court).

Dr. Zorn: The Permanent Court does not exist; there is only a bureau in reality.

#### ARTICLE 31

BILDT amendment: States that the choice of umpire should be submitted to the approval of the parties.

Chevalier Descamps: The Powers have sufficient communications with the arbitrators which they name.

There is no practical inconvenience. Approval is not in keeping with the moral dignity of the arbitrators; they may be challenged too for various reasons foreign to the actual dispute.

#### ARTICLE 51

The tribunal is authorized to fix the period within which the arbitral award must be executed.

Doctor Zorn has no instructions upon this point, but he doubts the acceptance of this amendment by his Government; he therefore reserves his vote upon the subject.

His Excellency Count Nigra withdraws his proposition in order not to arouse a new debate.

[70]

#### ARTICLE 54

Mr. Asser thinks that paragraph 12 should be modified: "*and only because of.*" It should be "*may only be made on the ground of the discovery etc.*"

We provided yesterday that the parties should themselves agree upon the period. I think we were wrong. We must provide a *complete* procedure since they may take it or leave it.

The committee adheres to the HOLLS amendment which is drawn up as follows: "The *compromis* determines (see the text)."

#### ARTICLE 56

Mr. Holls: Who will bear the expenses? The American delegation requests that this subject be cleared up. It proposes that the division of expenses be fixed in the *compromis*. In any case it will be necessary to have an authority to fix the expenses.

The President: The tribunal itself will fix the division of the expenses.

There are two questions: Dr. ZORN desires that the word *honoraria* be not used, as it would not be compatible with the dignity of the arbitrators.

On the other hand there are two classes of expenses.

The general expenses (heating, lighting, etc.): it is the duty of the administrative council to guarantee the payment of these. Then the special expenses in the case (lawyers, arbitrators): the payment of these will be made directly by the parties.

Chevalier Descamps: Article 19 has become Article 29; that will lead to a change in the numbering of all the articles.

That will be regrettable if we wish to keep the previous work clear. It will be better to find another combination.

Mr. DESCAMPS is authorized to propose it.

It is decided to use the expressions *titles* and *chapters* instead of *paragraphs*.

The committee approves certain modifications and changes of phraseology suggested by Chevalier DESCAMPS, especially in Article 1 (*with a view* instead of *with the purpose*).

The meeting adjourns.

# SEVENTEENTH MEETING

(*Third Special Meeting*)

JULY 19, 1899 <sup>1</sup>

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Mr. Léon Bourgeois presiding.

## Examination of Articles 9 to 13 Relating to "International Commissions of Inquiry" <sup>2</sup>

The President recalls that the Third Commission at its meeting of this morning authorized its committee to hear and discuss the remarks, objections and amendments presented by a certain number of delegates with regard to commissions of inquiry (see Section 3 of the Draft Convention). Consequently, he first presents for discussion the amendment of his Excellency Mr. EYSCHEN to Article 10. This amendment is as follows:

In default of special provisions, the procedure of inquiry should be determined by the principles contained in the rules written in Article 29 *bis et seq.* relating to arbitral procedure, so far as these principles are applicable to the institution of international commissions of inquiry.

Dr. ZORN is not inclined to accept this amendment in the form in which it is presented. Commissions of inquiry should remain distinct from arbitration. We cannot therefore submit them to the general rules of procedure established in our draft. We must leave to the commissions themselves the duty of determining the procedure which they will follow or at most limit ourselves to mere outlines.

Mr. Martens shares the view of Dr. ZORN. He repeats that the purpose of commissions of inquiry is neither to provoke an arbitration nor to prevent one. They have a perfectly distinct existence and their purposes may be summed up as follows: *to state*, by a common agreement between the parties, the material causes of the dispute. As to conclusions with regard to the procedure to be followed all that depends upon the parties. They may take advantage of the inquiry in order to have recourse to arbitration, or, on the contrary, they may

<sup>1</sup> House in the Woods. Present: His Excellency Mr. STAAL, *president of the Conference*; Jonkheer VAN KARNEBEEK, *vice president of the Conference*; their Excellencies Count NIGRA, Sir JULIAN PAUNCFOTE, *honorary presidents of the Third Commission*; Chevalier DESCAMPS, *president and reporter*; Messrs. ASSER, Baron d'ESTOURNELLES DE CONSTANT, HOLLS, LAMMASCH, MARTENS, ODIER, Dr. ZORN, *members of the committee of examination*. Present at the meeting: Messrs. BASILY, BELDIMAN, DELYANNI, his Excellency Mr. EYSCHEN, MIYATOVITCH, PAPINIU, Dr. VELJKOVITCH.

<sup>2</sup> See annex 10.

settle the matter in a friendly manner, but they are free. There is no bond between them except that of following their own desires.

Mr. **Asser** supports Mr. **MARTENS** on the point of the necessity of distinguishing between arbitration and commissions of inquiry. However, he recognizes the ground for observations indicated by his Excellency Mr. **EYSCHEN**, but they may be formulated in Article 10 itself and not in the code of arbitral procedure. In this way we shall avoid confusing two very different things: arbitration and commissions of inquiry. Furthermore, this is the idea suggested by Mr. **LAMMASCH**, and he endorses it thoroughly.

His Excellency Mr. **Eyschen** was conscious of the difficulties which have just been set forth, furthermore he does not insist upon the form and location of his amendment. What he does ask is a serious *guaranty* permitting commissions to operate and render all services which can be expected of them, but without danger. That is why I thought, he says, that it would be necessary to provide in advance and fix certain principles which might serve to inform and guide the commissioners. These principles constitute a triple guaranty, which I summarize in this form:

1. The act instituting the inquiry states definitely the facts to be examined (enumeration of facts).
2. Both sides shall be heard (the adverse party shall be informed of all statements of the opposite party).
3. It is the duty of the commission of inquiry to determine the forms and period to be observed.

Chevalier **Descamps** observes that without confusing arbitration and commissions of inquiry we may nevertheless adopt the necessary guaranties in one case as well as in the other. He therefore approves the proposition of his Excellency Mr. **EYSCHEN**, which is an improvement and fills a gap. This new guaranty would also be such as to soothe the irritation which appeared in the Third Commission.

His Excellency Count **Nigra**, considering the observations which have just been made, proposes the following text to express the idea of his Excellency Mr. **EYSCHEN**:

The international commissions of inquiry are constituted by special agreement between the parties in dispute.

The inquiry convention defines the facts to be examined and the extent of the powers of the commissioners.

It settles the procedure.

At the inquiry both sides must be heard.

The form and the periods to be observed, if not stated in the inquiry convention, shall be decided by the commission itself.

This draft, accepted by his Excellency Mr. **EYSCHEN**, is unanimously adopted by the committee.

#### ARTICLE 13

Mr. **Stancioff** proposes to add to Article 13 the following words: "*either to consider the latter as not having been made*" after these words "*on the basis of this report*" (line 3). He states briefly the object of his amendment by saying that he wished to leave the Powers absolute freedom to give such effect to the inquiry as they may agree upon and to clearly affirm in this way that it has no binding force. As for his own views, he is distinctly in favor of commissions of

inquiry because he thinks that we should increase the juridical means which are opposed to the too direct contacts between the diplomatic forces of two States — contacts in which the *ultima ratio* is always reliant upon armed force. He

therefore believes that this new institution is entirely to the advantage of [72] smaller Powers, but at the same time to pacify the apprehensions of certain

States in the Balkans he proposes to state expressly that the two litigants are not bound in any manner by the result of the inquiry.

The **President**, while congratulating himself on behalf of the committee at the attitude of the first delegate from Bulgaria, and for the spirit in which he has presented his amendment, observes that the expression "not having been made" is too strong and would too clearly incite nations to pay no attention to the reports.

Mr. **Martens** thinks it is not necessary to *anticipate* that no effect will be given to the inquiry. That would scarcely be encouraging. It is sufficient to reserve freedom to the Powers.

Mr. **Delyanni** declares that it is necessary that States should be plainly informed that they are not bound by the conclusions of the inquiry and it will be desirable that an explicit statement to this effect be inserted.

Mr. **Asser**: By saying that the conclusions are not binding, does that signify that the facts should not necessarily be considered as elucidated in the report?

Mr. **Lammasch**: Article 9 and Article 13 treat of very different questions. In Article 9 it is a question of ascertaining whether the *use* of commissions of inquiry is obligatory or not. In Article 13 it is a question of ascertaining whether the *report* of the commission established by the agreement of the parties is binding or not. If the two litigants have agreed to have recourse to a commission of inquiry in the exercise of their complete freedom of action, why should they not give consideration to its report?

The **President** understands the matter of which Mr. **ASSER** was thinking. Will the report be sufficient to make the statement of facts authentic? We cannot enter into these details.

What is certain, he continues, is that in our eyes the report of commissions of inquiry *states* simply the facts and cannot result in imposing obligations upon the parties. We might therefore say: "The report of international commissions of inquiry is limited to a *statement of facts*, etc."

Dr. **Veljkovitch** asks whether we should not reserve the adoption of this article, because the report of the commission of inquiry will sometimes be binding in fact if two Powers of unequal strength are opposed to each other: the weaker will be obliged to sacrifice itself.

Mr. **Martens**: It would not be necessary, however, to go so far as to accept a text which would permit a Power to make light of the statement of facts, so to speak.

Mr. **Lammasch** thinks it wise to say that no conclusions should be drawn in the report: there should be simply a statement of facts. The report of this international commission is limited to a statement and does not have the character of an award.

Chevalier **Descamps** does not think that a satisfactory solution can be reached other than that proposed by the **PRESIDENT**.

Article 13 is finally adopted unanimously in the following form suggested by Mr. **ODIER**:

The report of the international commission of inquiry is limited to a finding of facts, and has in no way the character of an award. It leaves to the Powers in dispute entire freedom as to the effect to be given to this finding.

#### ARTICLE 9

The **President** declares that the opposition of certain Powers to this article arises from their fear that some *obligation* is contained therein. This is not the idea of the committee; we must therefore find some phraseology which puts beyond doubt the *voluntary character* of commissions of inquiry.

His Excellency Count **Nigra** recognizes that there is reason to consider the claim of the Powers which shall be absolutely free to *accept* or to *refuse* the opinion of the commissions without being obliged to invoke either considerations of honor or of vital interests: they must not be obliged even to give reasons and they must be able to say merely that they are *unwilling*.

The **President** observes that as soon as commissions of inquiry are considered voluntary, there is no longer any reason for making reservations regarding circumstances of honor and vital interest.

Mr. **Martens** would be resigned to this sacrifice but on the condition that the operation of commissions of inquiry be assured by obliging Powers to resort thereto because of a moral obligation similar to that in Article 27.

Dr. **Zorn** declares that he has been favorable to the system of commissions of inquiry; however in order to meet the objections which exist he is of the opinion that we must make concessions, he thinks that the best plan would [73] be to avoid anything which might give an obligatory character to Article 9.

He recognizes that the situation between two great Powers is not the same as between two Powers of different strengths. In case the committee should make this concession he is anxious to know whether the Balkan States will on their side come the other half of the way.

Mr. **Beldiman** cannot reply categorically. The discussion upon Article 9 seems to him to be exhausted. All that he can promise is to transmit the compromise text of the committee to Bucharest by telegraph.

Dr. **Veljkovitch** and Mr. **Delyanni** make the same declaration.

His Excellency Mr. **Eyschen** wishes, however, to address to Mr. **Beldiman** a pressing appeal in the interests of the smaller Powers themselves. He begs him to accept and to defend the text of the committee. We should consider the force of circumstances. We can no more cause differences between large and small States to disappear than we can differences between men. Therefore Mr. **Eyschen** would view with regret the disappearance of clauses relative to honor and vital interests, because these clauses would be a protection especially to small States. In reality the small are always exposed to the moral pressure of the stronger, but the fact of being able to take shelter behind these clauses would afford a further protection which should not be scorned.

Mr. **Martens** supports this observation: he does not know why the small States do not wish to profit by guaranties which have been given them, because in the chapter on the commissions of inquiry, Article 9, as now drawn up, a small State is permitted to refuse an inquiry by authority of the text of an act of The Hague signed by all the Powers and by its adversary. Admitting that this adversary takes no notice of the refusal, it will violate an international agreement and will consequently have the opinion of the world against it. This might

stop it. If we strike out these guaranties, the small States will have no reason to call upon it: they will deprive themselves voluntarily of a great strength. The institution of commissions of inquiry is entirely to the advantage of the weak, and they ignore their own interests when they oppose them.

As for the phrase "*vital interests and national honor*," its omission is still injurious to small States. The latter may in fact invoke this clause in the smallest discussion with great Powers, while we cannot understand the action of a great Power in arguing about its vital interests in order to avoid an investigation asked for by a smaller Power.

Mr. Holls shares the indisputable opinion of Mr. MARTENS.

After a general discussion, the committee decides to adopt a compromise text intended to meet the objections of the delegates from Roumania, Serbia and Greece; the text will be transmitted to-day by telegram to Bucharest, Belgrade and Athens.

Mr. Lammasch asks if the clause relative to vital interests and national honor should not be maintained.

Mr. d'Estournelles replies that this is evidently the desire of the committee, but we are neither concerned with what is desired by the committee, nor what is the real interest of the three States the delegates of which are raising objections: it is a question of furnishing a text for them which will permit us to attain some result; let us therefore support the text which these three delegates will accept, and wait until their Governments make known whether they ratify this acceptance or not.

Mr. Lammasch withdraws his amendment relative to "vital interests" in order to obtain a unanimous vote.

The President asks the delegates from Roumania, Serbia and Greece when they hope for a reply to their telegram. He urges the desirability of having one as soon as possible, the committee having some fifteen days ago given all the members of the Conference notice to make known their objections to the draft. In any case, the second reading of the "Title on commissions of inquiry" will not come before the Third Commission until the very end.

Before closing the session, the PRESIDENT asks the delegates from Roumania, Serbia and Greece to kindly bring to the attention of their Governments the spirit of conciliation and absolute fairness in which the committee has ceaselessly and unanimously labored. The committee is anxious to give guaranties to all peaceful Powers, and above all to the smallest and weakest. The PRESIDENT adds that every time that an international court is established in the world there are more chances for it to serve as a defense to the weak than to the strong.

The committee approves this interpretation of the spirit in which it has worked, and thanks the PRESIDENT for having exactly summarized its sentiments.

The meeting adjourns.

[74]

## EIGHTEENTH MEETING

(*Fourth Special Meeting*)

JULY 21, 1899<sup>1</sup>

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Mr. **Léon Bourgeois** presiding.

The committee has met to examine the amendment proposed by the delegate of the United States of America to Article 36.

### *Question of incompatibilities*

Mr. **Holls**: Properly speaking it is not an amendment which we are proposing; it is rather a question which we wish to submit to the consideration of the committee. We propose that members called upon to constitute the *Permanent Court* shall not have a right to serve at the same time as counsel or special agents before the same Court unless it is for them to represent the country which has appointed them. This is our proposition. We make it mainly for the purpose of bringing about a discussion and ascertaining the opinion of the committee on this point. That is of great importance to members of the bar and judges in England and America, and perhaps in European countries.

The following text might furnish a basis of discussion for the committee:

No member of the Permanent Court of Arbitration may, during the term of his office, accept the duties of agent, lawyer or counsel for any Government except his own or that which has appointed him a member of the Court.

This text tends to avoid two dangers, obtaining on one hand judges who are not only independent but above every suspicion, and by avoiding, on the other hand, any rule which might unreasonably restrict the free choice of Governments. It is for this last reason and because the period of service is limited to six years that we have not proposed the English maxim "*once a judge, always a judge.*"

In England and in America there is no question: he who is fitted to be a good judge may be fitted to practice as a lawyer or agent before the court. But does the same situation prevail in other countries? This is doubtful. It must therefore be stated, if not in the Convention at least in the minutes, whether the arbitrator will be authorized to plead or not. If we are not careful to fix this

<sup>1</sup> House in the Woods. Present: His Excellency Mr. STAAL, *president of the Conference*; Jonkheer VAN KARNEBEEK, *vice president of the Conference*; their Excellencies Count NIGRA, Sir JULIAN PAUNCEFOTE, *honorary presidents of the Third Commission*; Chevalier DESCAMPS, *president and reporter*; Messrs. ASSER, Baron d'ESTOURNELLES DE CONSTANT, HOLLS, LAMMASCH, MARTENS, ODIER, Dr. ZORN, *members of the committee of examination*. Present at the meeting: Mr. BASILY.



rule, we shall leave the way open for the creation of precedents and very doubtful situations will be produced; it is a question of propriety and tact rather than one of law, which we would do well to decide in the interests of satisfactory practice under the Convention.

His Excellency Count **Nigra** wonders whether it is really necessary for the committee to decide this question.

Mr. **Holls** gives an example. He supposes that Dr. **Zorn** is named as a judge of Siam. Could he be a lawyer for Germany and a judge for Siam, not in the same proceeding, of course, but before the same tribunal?

Chevalier **Descamps**: This is a new question which has been presented: a question of *conflict of official duties*. Now the very question of such conflict is serious because it reacts upon the selection of the officer and the limitation of his office. Take care not to appear to attack the freedom of States by endeavoring to provide for too many situations. We might reach the result which Mr.

**Holls** desires by stating that each State has the right to fix its own [75] conditions as to the choice of arbitrators, and to decide itself whether arbitrators shall or shall not have both the functions of arbitrators and those of lawyers. Thus we shall respect the exercise of national sovereignty while calling attention to the question raised. It may be desirable that this combination should not exist, but to forbid it is not our business. That concerns the States. If we adopt too absolute a rule, there might be arbitrators of ability and authority who would refuse to be placed upon the list in order to reserve the right to be agents or lawyers. Let us limit ourselves to pointing out that the combination is not desirable, but let us reserve the freedom of Governments.

It is not necessary either in connection with this question to touch upon certain personal exceptions which the conscience of each arbitrator alone can settle.

Mr. **Asser** observes that Mr. **Holls** has not proposed the imposition of a rule but a statement of our opinion. That of Chevalier **Descamps** is that the committee might wisely express an opinion. So far as he is concerned, he does not hesitate to declare that complete liberty of conscience must be left to the Governments; it is for them to weigh their objections, not for us.

Dr. **Zorn** supports the declaration of Mr. **Asser**.

Mr. **Holls** replies that this does not concern one Government alone but all Governments, because an arbitrator designated by a Government is recommended to all the others, and the entire world therefore is interested in knowing under what conditions this arbitrator is named. That is why Mr. **Holls** insists upon having the opinion of the committee.

Mr. **Lammasch** thanks the American delegate for having raised this question, because the authority and *independence of the arbitrators* are so essential that to strengthen the confidence which they should inspire, every possible precaution should be taken and we should consent to some sacrifices. Mr. **Lammasch** would be happy to see a rule established which would be a limitation without at the same time proving to be an embarrassment. Consequently he endorses the request presented by Mr. **Holls**.

A general discussion arises, participated in by Jonkheer **van Karnebeek**, Messrs. **Asser** and **Léon Bourgeois**, concerning the general conditions in which this limitation might be set forth.

The **President** is impressed with the inconveniences set forth by Mr. **Holls**

which may be raised when an arbitrator has been appointed: then it is undoubtedly necessary to foresee and prevent the danger of *temporary incompatibility* because we cannot forget that we have given to the arbitrators privileges such as diplomatic immunity. By reason of these temporary privileges, it seems difficult to dispute the fact that there is also a temporary incompatibility. But of course outside the time when the arbitrator is called upon to sit as an arbitrator no general incompatibility can result from the fact that he is upon the list: this fact should not prevent him from being an agent or lawyer.

Mr. Holls presents this question: if he accepts an appointment as a lawyer before the court, would it be a sufficient reason to prevent him from becoming an arbitrator? Will he remain upon the list? He hopes that the committee will be willing to express its opinion upon this point.

Chevalier Descamps proposes a draft embodying the observations of Mr. BOURGEOIS.

His Excellency Count Nigra upon this occasion makes the following remark: some national legislations provide — as does the Italian — that any citizen accepting employment in a foreign country loses his nationality. It should be clearly understood that any jurist agreeing to act as arbitrator for a foreign Power should not lose his nationality.

Jonkheer van Karnebeek thinks that the question is not a practical one.

The President: The free consent of Governments to the appointment of arbitrators implies their authority. The committee shares this point of view and decides that mention thereof shall be made in the minutes.

Returning to the question of duplication of duties, the committee decides that the declaration proposed by Chevalier DESCAMPS shall be inserted in the report in the following terms:

No member of the Court can, while exercising his duties as a member of the arbitral tribunal, accept appointment as a special agent or lawyer before an arbitral tribunal.

The meeting adjourns.

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## Annex 1, A

[1]

# OUTLINES FOR THE PREPARATION OF A DRAFT CONVENTION TO BE CONCLUDED BETWEEN THE POWERS TAKING PART IN THE HAGUE CONFERENCE

## RUSSIAN DRAFT

### *Good offices and mediation*

#### ARTICLE 1

With the purpose of obviating, as far as possible, recourse to force in international relations, the signatory Powers have agreed to use their best efforts to

bring about by pacific means the settlement of disputes which may arise between them.

#### ARTICLE 2

Consequently, the signatory Powers have decided that, in case of serious disagreement or dispute, before an appeal to arms, they will have recourse, so far as circumstances admit, to the good offices or mediation of one or more friendly Powers.

#### ARTICLE 3

In the case of mediation accepted spontaneously by the litigant States, the object of the Government acting as mediator is to reconcile the opposing claims and appease the feelings of resentment which may have arisen between these States.

#### ARTICLE 4

The part of the Government acting as mediator is at an end when the settlement proposed by it or the bases of a friendly settlement which it may have suggested are not accepted by the litigant States.

#### ARTICLE 5

The Powers consider it useful in case of serious disagreement or conflict between civilized States concerning questions of a political nature, independently of the recourse which these Powers might have to the good offices and mediation of Powers not involved in the dispute, for the latter, on their own initiative and so far as circumstances will allow, to offer their good offices or their mediation in order to smooth away the difficulty which has arisen, by proposing a friendly settlement, which without affecting the interest of other States, might be of such a nature as to reconcile in the best way possible the interests of the litigant parties.

#### ARTICLE 6

It is of course understood that mediation and good offices, whether offered on the initiative of the litigant parties or upon that of the neutral Powers, have strictly the character of friendly advice and no binding force whatever.

### *International arbitration*

#### ARTICLE 7

With regard to those controversies concerning legal questions, and especially with regard to those concerning the interpretation or application of treaties in force, arbitration is recognized by the signatory Powers as being the most effective and at the same time the most equitable means for the friendly settlement of these disputes.

#### ARTICLE 8

The contracting Powers consequently agree to have recourse to arbitration in cases involving questions of the character above mentioned, so far as they do not concern the vital interest or national honor of the litigant Powers.

[2]

#### ARTICLE 9

Each State remains the sole judge of whether this or that case should be

submitted to arbitration, excepting those enumerated in the following article, in which cases the signatory Powers to the present document consider arbitration as obligatory upon them.

#### ARTICLE 10

Upon the ratification of the present document by all the signatory Powers, arbitration will be obligatory in the following cases, so far as they do not concern the vital interests nor national honor of the contracting States:

I. In case of differences or disputes relating to pecuniary damages suffered by a State, or its nationals, as a consequence of illegal actions or negligence on the part of another State or its nationals:

II. In case of disagreement relating to the interpretation or application of the treaties and conventions mentioned below:

1. Treaties and conventions relating to the posts and telegraphs, railroads, and also those bearing upon the protection of submarine telegraph cables; regulations concerning methods to prevent collisions of vessels on the high seas; conventions relating to the navigation of international rivers and interoceanic canals.

2. Conventions concerning the protection of literary and artistic property as well as industrial property (patents, trade-marks, and trade-names); conventions relating to money and measures; conventions relating to sanitation and veterinary surgery, and for the prevention of phylloxera.

3. Conventions relating to inheritance, exchange of prisoners, and reciprocal assistance in the administration of justice.

4. Conventions for marking boundaries, so far as they concern purely technical and non-political questions.

#### ARTICLE 11

The enumeration of the cases mentioned in the above article may be completed by subsequent agreements between the signatory Parties of the present Act.

Besides, each of them may enter into a special agreement with any other Power, with a view to making arbitration obligatory in the above cases before general ratification, as well as to extend the scope thereof to all cases which the State may deem it possible to submit to arbitration.

#### ARTICLE 12

In all other cases of international disputes, not mentioned in the above articles, arbitration, while certainly very desirable and recommended by the present Act, is only voluntary; that is to say, it cannot be resorted to except upon the suggestion of one of the parties in litigation, made by its own accord and with the express consent and full agreement of the other party or parties.

#### ARTICLE 13

With a view to facilitating recourse to arbitration and its application, the signatory Powers have agreed to define by common agreement the fundamental principles to be observed by the institution, and the rules of procedure to be followed during the examination of the dispute and the delivery of the arbitral decision in cases of international arbitration.

The application of these fundamental principles, as well as of arbitral pro-

cedure, indicated in the appendix to the present article, may be modified by a special agreement between the States which resort to arbitration.

*International commissions of inquiry*

ARTICLE 14

In cases which may arise between the signatory States where differences of opinion with regard to local circumstances have given rise to a dispute of an international character which cannot be settled through the ordinary diplomatic channels, but wherein neither the honor nor the vital interests of these States are involved, the interested Governments agree to form an international commission of inquiry in order to ascertain the circumstances forming the basis of the disagreement and to elucidate the facts of the case by means of an impartial and conscientious investigation.

[3]

ARTICLE 15

These international commissions are formed as follows:

Each interested Government names two members and the four members together choose the fifth member, who is also the president of the commission. In case of equal voting for the selection of a president, the two interested Governments by common agreement address a third Government or a third person, who shall name the president of the commission.

ARTICLE 16

The Governments between which a serious agreement or a dispute under the conditions above indicated has arisen, undertake to supply the commission of inquiry with all means and facilities necessary to a thorough and conscientious study of the facts in the case.

ARTICLE 17

The international commission of inquiry, after having stated the circumstances under which the disagreement or dispute has arisen, communicates its report to the interested Governments, signed by all the members of the commission.

ARTICLE 18

The report of the international commission of inquiry has in no way the character of an award; it leaves the disputing Governments entire freedom either to conclude a settlement in a friendly way on the basis of the above-mentioned report, or to resort to arbitration by concluding an agreement *ad hoc*, or finally, to resort to such use of force as is accepted in international relations.

## Annex 1, B

[4]

## APPENDIX B

## APPENDIX TO ARTICLE 12

*Russian draft of arbitral code*

## ARTICLE 1

The signatory Powers have approved the principles and rules below for arbitral procedure between nations, except for modifications which may be introduced in each special case by common agreement between litigant Governments.

## ARTICLE 2

The interested States, having accepted arbitration, sign a special act (*compromis*) in which the questions submitted to the decision of the arbitrator are clearly defined as well as all of the facts and legal points involved therein, and in which is found a formal confirmation of the agreement of the two contracting Powers to submit in good faith and without appeal to the arbitral decision which is to be rendered.

## ARTICLE 3

The *compromis* thus freely concluded by the States may adopt arbitration, either for all disputes arising between them or for disputes of a special class.

## ARTICLE 4

The interested Governments may entrust the duties of arbitrator to the sovereign or the chief of State of a third Power when the latter agrees thereto. They may also entrust these duties either to a single person chosen by them, or to an arbitral tribunal formed for this purpose.

In the latter case and in view of the importance of the dispute the arbitral tribunal may be formed as follows: each contracting party chooses two arbitrators and all the arbitrators together choose the umpire who is *de jure* president of the arbitral tribunal.

In case of equal voting the litigant Governments shall address a third Power or a third person by common agreement and the latter shall name the umpire.

## ARTICLE 5

If the litigant parties do not arrive at an agreement upon the choice of the third Government or person mentioned in the preceding article, each of the parties shall name a Power not involved in the dispute so that the Powers thus chosen by the litigant Powers may designate an umpire by common agreement.

## ARTICLE 6

The disability or reasonable challenge, even if of but one of the above arbitrators, as well as the refusal to accept the office of arbitrator after the acceptance, or death of an arbitrator already chosen, invalidates the entire *compromis* except

in cases where these conditions have been foreseen and provided for in advance by common agreement between the contracting Parties.

#### ARTICLE 7

The meeting-place of the arbitral tribunal shall be fixed either by the contracting States, or by the members of the tribunal themselves. A change from this meeting-place of the tribunal is not permissible except by a new agreement between the interested Governments, or in case of *force majeure*, upon the initiative of the tribunal itself.

[5]

#### ARTICLE 8

The litigant Powers have the right to appoint delegates or special agents attached to the arbitral tribunal for the purpose of serving as intermediaries between the tribunal and the interested Governments.

Besides these agents the above-mentioned Governments are authorized to commit the defense of their rights and interests before the arbitral tribunal to counsel or advocates appointed by them for this purpose.

#### ARTICLE 9

The arbitral tribunal decides what language shall be used in its deliberations and arguments of the parties.

#### ARTICLE 10

Arbitral procedure should generally cover two phases, preliminary and final.

The former consists in the communication to the members of the arbitral tribunal by the agents of the contracting parties of all acts, documents, and arguments, printed or written, regarding the questions in litigation.

The second—final or oral—consists of the debates before the arbitral tribunal.

#### ARTICLE 11

After the close of the preliminary procedure the debates open before the arbitral tribunal and are under the direction of the president.

Minutes of all these deliberations are drawn up by secretaries appointed by the president of the tribunal. These minutes are of legal force.

#### ARTICLE 12

The preliminary procedure being concluded the arbitral tribunal has the right to refuse all new acts and documents which the representatives of the parties may desire to submit to it.

#### ARTICLE 13

The arbitral tribunal, however, is always absolutely free to take into consideration new papers or documents which the delegates or counsel of the two litigant Governments have made use of during their explanations before the tribunal.

The latter has the right to require the production of these papers or documents and to make them known to the opposite party.

#### ARTICLE 14

The arbitral tribunal besides has the right to require the agents of the parties to present all the acts or explanations which it may need.

## ARTICLE 15

The agents and counsel of litigant Governments are authorized to present orally to the arbitral tribunal all the explanations or proofs which will aid the defense of the cause.

## ARTICLE 16

These agents and counsel have also the right to present motions to the tribunal concerning the matters to be discussed.

The decisions of the tribunal upon these motions are final and cannot form the subject of any discussion.

## ARTICLE 17

The members of the arbitral tribunal are entitled to put questions to the agents or counsel of the contracting Parties or to ask them for explanations on doubtful points.

Neither the questions put nor the remarks made by the members of the tribunal during the deliberations can be regarded as expressions of opinion by the tribunal in general or by its members in particular.

[6]

## ARTICLE 18

The arbitral tribunal alone is authorized to determine its competence in interpreting the clauses of the *compromis*, and according to the principles of international law as well as the provisions of special treaties which may be invoked in the case.

## ARTICLE 19

The arbitral tribunal is entitled to issue rules of procedure for the conduct of the case, to decide the forms and time in which each party must conclude its arguments and to pass upon the interpretation of the documents produced and communicated to the two parties.

## ARTICLE 20

When the agents and counsel of the parties have submitted all the explanations and evidence in defense of their case, the president of the arbitral tribunal shall pronounce the discussion closed.

## ARTICLE 21

The deliberations of the arbitral tribunal on the merits of the case take place in private.

Every decision, whether final or interlocutory, is taken by the majority of the members present.

The refusal of a member of the tribunal to vote must be recorded in the minutes.

## ARTICLE 22

The award given by a majority of votes should be drawn up in writing and signed by each member of the arbitral tribunal.

Those members who are in the minority state their dissent when signing.

## ARTICLE 23

The arbitral award is solemnly read out at a public sitting of the tribunal and in the presence of the agents and counsel of the Governments at variance.



## ARTICLE 24

The arbitral award, duly pronounced and notified to the agents of the Governments at variance, settles the dispute between them definitely and without appeal, and closes all of the arbitral procedure instituted by the *compromis*.

## ARTICLE 25

Each party shall pay its own expenses and one-half of the expenses of the arbitral tribunal without prejudice to the decision of the tribunal regarding the indemnity that one or the other of the parties may be ordered to pay.

## ARTICLE 26

The arbitral award is void in case of a void *compromis* or exceeding of power, or of corruption proved against one of the arbitrators.

The procedure above indicated concerning the arbitral tribunal and beginning with Section 7 commencing with the words "the seat of the arbitral tribunal" also applies in case arbitration is entrusted to a single person chosen by the interested Governments.

In case a sovereign or head of a State should reserve the right to decide personally as arbitrator, the procedure to be followed should be fixed by the sovereign or the head of the State himself.

## Annex 1, C

[7]

EXPLANATORY NOTE CONCERNING ARTICLE 5 OF THE  
RUSSIAN DRAFT

The Conference which is about to meet at The Hague is essentially different from those which were held at Geneva (in 1864), at St. Petersburg (in 1868), and at Brussels (in 1874).

These early conferences intended to humanize war after war had been declared; while the assembly convoked at The Hague must devote itself especially to the discovery of methods to prevent the very declaration of war. The Hague Conference therefore must be a Peace Conference in the most positive sense of the term.

Practice of international law has worked out a complete set of methods to prevent war by the pacific settlement of international disputes, and among these must be set, above all, good offices, mediation, and arbitration. It seems very natural that the Conference should consider the perfecting of the guaranties and methods already existing for the assurance of lasting peace among nations, instead of seeking new means which have not been tried and sanctioned by practice. With this in mind the Conference should especially give its attention to "good offices" and "mediation" by third parties; that is, by Powers which are not involved in the conflict presumed to exist.<sup>1</sup>

<sup>1</sup> The distinction made between "good offices" and "mediation" is entirely theoretical.

Mediation should doubtless be, from its very nature, placed among the most useful and practical methods in the law of nations. Being a necessary response to that real community of material and moral interests which creates an international union among the various States, mediation should inevitably acquire a continually increasing importance and value, in proportion to the increasing intimacy among States and the development of their international relations. The possible advantage of mediation, if we compare it with the other methods used to settle international disputes, is especially the remarkable elasticity of its operation, the ease with which it is adapted to the particular circumstances of each given case, as well as the variety of forms arising from this ease of adaptation. Being dependent upon the free consent of the parties, mediation does not in the least threaten the principle of their sovereignty nor the liberty or independence of States; it influences the arbitrator freely chosen by them without ever opposing him, without ever calling him in question.

There is no doubt that arbitration, generally speaking, is a more effective and radical method than mediation; but arbitration being of a legal nature, its application is essentially and even exclusively restricted to cases where there is a conflict of international rights, while mediation, although of a political character, is equally applicable to the conflicts of interests which most often threaten peace among nations. Finally, it is equally essential to note that mediation is distinguished from other analogous modes of action by an astonishing simplicity of application which demands no previous preparation whatever. This instrument, in daily use in diplomacy, tactfully and skillfully handled and guided by a sincere desire to serve in the work of peace, seems called upon to play a striking and beneficent rôle in the future.

However, mediation has up to the present played a most modest rôle in the settlement of international difficulties; this statement is supported by the history of even the most recent disputes.

If we look for the reason for this fact, we must consider first how unsatisfactory is the status of mediation in the theory as well as in the practice of international law.

By the terms of Article 8 of the Treaty of Paris the Sublime Porte, as well as the other signatory Powers to that treaty, is bound to submit every future disagreement which may arise between any of them to the mediation of the other Powers, to prevent the use of force.

[8] Giving this idea a more general scope, Article 23 of the protocol of the Congress of Paris, inserted at the suggestion of Lord CLARENDON, British Plenipotentiary, expresses the desire that States between which serious disagreements may arise shall request the good offices of a friendly Power so far as circumstances permit rather than resort to arms.

In the same way, at the African Conference at Berlin, in 1885, the Powers mutually agreed to resort first of all to mediation by one or several neutral States in case disagreement arose between them concerning the Congo and its basin.

The provisions above set forth are inspired by one and the same thought expressed in almost identical terms. They oblige all the States interested in the dispute to request mediation; they do not mention the duty of neutrals to propose

These methods are legally identical in character and differ only in degree and the importance of their results. Diplomacy has never insisted upon this distinction. (Cf. Article 9 of the Treaty of Paris of 1856, and Article 23 of the protocol of the Congress of Paris, 1856.)

it. From this point of view mediation imposes duties upon the States directly interested but not upon neutral States.

This sort of mediation, very irregular from a theoretical point of view, has also the disadvantage of making mediation unattainable from a practical point of view. The request for mediation necessarily presupposes a previous agreement between the interested States with regard to the necessity and the opportunity for it. Now, such an agreement is not always possible in the heat of a dispute between interests diametrically opposed to each other. In any case we cannot consider the making of the request for mediation obligatory on the part of the States whose interests are in question, especially since that requires that opposing desires be harmonized and that the parties agree in the choice of a mediator.

Treaties, unhappily still less numerous, which make the request for arbitration obligatory, at the same time regulate, and generally in advance, the organization of the tribunal called upon to render the arbitral decision, without making this organization dependent upon the consent or dissent of the interested parties.<sup>1</sup> It goes without saying that treaties cannot deal with the obligation of parties to choose a mediator, whose advice could be only of moral effect proportionate to the respect and confidence which he inspired in the interested parties. The designation of mediators must necessarily be brought about by the agreement of the parties; now, since this agreement depends absolutely upon their good-will, and may, even if this good-will is secured, be unattainable, it follows that we should not consider the request for mediation as obligatory upon the States directly interested. Even if the treaties did impose such a duty upon States, in case of a dispute, this duty would still be, generally speaking, ineffective, because conventions could not oblige States, in spite of everything, to agree upon this or that mediator.

This view is confirmed by the history of international relations since the Congress of Paris, 1856. Thus within the last forty years there have been several cases where neutral States, referring to Article 23 of the protocol of the Congress of Paris, have offered their mediation and good offices to States in controversy; but there has not been a single case where the States in controversy have addressed a request for mediation to neutral States. Last year, at the time of the dispute between France and England, concerning Fashoda, neither one nor the other of these Powers thought of resorting to the provisions adopted at the Conference at Berlin in 1885, and did not appeal to the mediation of a third Power. We might cite other examples of a similar character.

As for the obligation for neutral States to offer mediation to States in controversy when not established by treaty, this is not recognized nor observed by any one. In theory, too, some authors have gone so far as to assert that neutral States are not only not obliged to offer mediation to disputing States, but that they have not the right to do so. BLUNTSCHLI and HEFFTER consider mediation as a dangerous and injurious interference in the affairs of others. HAUTEFEUILLE and GALIANI advise States prudently to abstain from mediation, fearing to alienate the sympathies of one or other of the parties in controversy without justification. In short, we might cite, as a matter of practice, a number of examples of serious disputes, which later ended in war, which did not suggest to neutrals the least idea of attempting to offer mediation; however, proposals of this character,

<sup>1</sup> See, for example, Article 16 of the General Postal Convention signed at Berne in 1874, and Article 8 of the treaty signed in Washington in 1890.

especially in cases where they might have come simultaneously from several Powers, could have prevented wars the effects of which have been incalculable upon all the States constituting the international community.

In many cases the offer of mediation comes so late and in such uncertain terms that it cannot prevent war. For example, such was the case when [9] the French Government in 1870 refused the "good offices" of England when the war broke out between France and Germany.

Finally, it often happens that mediation is proposed not with the view to prevent war, but in order to end it.

Several recent wars — the Austro-Prussian War of 1866, that between Chile, Peru, and Bolivia in 1882, that between Greece and Turkey in 1897, and still others — were terminated, thanks to the mediation of neutral Powers. If these same Powers had made use of all the energy they employed to terminate these wars in an effort to prevent them, it is possible that Europe would have been spared more than one armed conflict.

After what has just been said, it is not difficult to indicate the way for the Conference to increase the importance and enlarge the scope of mediation, by making it a permanent and necessary institution in international law. Innumerable reciprocal entangling interests envelop civilized States in a close and inextricable net. The principle of isolation, which but lately still dominated the political life of each nation, has given way henceforth to a close solidarity of interests, to common participation in the moral and material benefits of civilization.

Modern States cannot stand indifferent to international conflicts wherever they may arise and whoever may be the parties in controversy. At the present time, a war even between two States seems to be an international evil. To fight this evil it is necessary to employ methods of a general character; we must combine the efforts of each and every State.

From this point of view, each Power must employ its every effort to bring into action all its energies to prevent conflicts which threaten peace, while respecting, of course, the independence of other sovereign States. In particular, each State should, so far as circumstances will allow, offer mediation to disputing States the moment it has the least hope of preventing thereby the terrible evils of war.

It is because they realize the serious consequences which one or another result of war may have for the international community, that neutral States ordinarily offer to the belligerent parties mediation for the conclusion of peace. Mediation of this character, generally collective, often makes it impossible for the victor to derive from his victories the advantages for which the war was undertaken.

The important fact, without doubt, so far as neutral States are concerned, is not merely the result of a war but the very fact that it has taken place. It follows that the interests of neutrals require that mediation should be proposed by them not only to end a war already begun, but above all to prevent the outbreak. This is also to the interest of the States in controversy, and all the more so since when war breaks out, each belligerent State is interested, to-day, to know the attitude of the neutral Powers with regard to the conflict in order to be able to calculate and determine, not only the power of resistance of the adversary during the war, but also the pressure which will come from the neutral Powers at the conclusion of peace.

The theory of international law, as shown by its most highly respected representatives, such as TRAVERS-TWISS, PHILLIMORE, PRADIER-FODÉRE, MARTENS, and others, has for a long time considered mediation as a duty on the part of neutral States. The Peace Conference will perhaps deem it useful to proclaim this duty before all humanity, so that mediation will be given the value of a powerful instrument for peace.

## Annex 1, D

[10]

### EXPLANATORY NOTE CONCERNING ARTICLE 10 OF THE RUSSIAN DRAFT

In entering upon an examination of the question of arbitration, we must first of all bear in mind the essential difference between obligatory and voluntary arbitration.

As a general question, it is difficult to conceive of any dispute whatever of a legal character, arising in the field of positive international law, which could not by virtue of agreement between the parties be decided by means of voluntary international arbitration. Even in case international law, which unfortunately still contains so many gaps, does not furnish a generally recognized rule for the solution of the concrete question, the *compromis* concluded between the parties prior to the arbitration may, however, create a principle *ad hoc*, and in this way facilitate considerably the task of the arbitrator.

It is different with obligatory arbitration, which does not depend upon the special consent of the parties. It goes without saying that this form of arbitration cannot apply to all cases and all kinds of disputes. There is no Government which would consent in advance to assume the obligation to submit to a decision of an arbitral tribunal every dispute which might arise in the international domain if it concerned the national honor of a State, or its highest interests, or its inalienable possessions. In fact, the mutual rights and duties of States are determined to a marked degree by the totality of what we call political treaties, which are nothing but the temporary expression of chance and transitory relationship between the various national forces. These treaties restrict the freedom of action of the parties so long as the political conditions under which they are produced are unchanged. Upon a change in these conditions the rights and obligations following from these treaties necessarily change also. As a general rule, disputes which arise in the field of political treaties in most cases concern not so much a difference of interpretation of this or that principle, as the changes to be made in the treaty, or the complete abrogation thereof.

Powers which take an active part in the politics of Europe cannot therefore submit disputes arising in the field of political treaties to the examination of an arbitral tribunal, in whose eyes the principle established by the treaty would be just as obligatory, just as inviolable, as the principle established by the positive law in the eyes of any national tribunal whatever.

From the point of view of practical politics, the impossibility of universal obligatory arbitration seems evident.

But from another point of view, it cannot be doubted that in international life differences often arise which may absolutely and at all times be submitted to arbitration for solution; these are questions which concern exclusively special points of law and which do not touch upon the vital interests, or national honor of States. We do not desire that the Peace Conference should, so far as these questions are concerned, set up arbitration as the permanent and obligatory method.

The recognition of the obligatory character of arbitration, were it only within the most restricted limits, would strengthen legal principles in relations between nations, would guarantee them against infractions and encroachments; it would neutralize, so to speak, more or less, large fields of international law. For the States obligatory arbitration would be a convenient means of avoiding the misunderstandings, so numerous, so troublesome, although of little importance, which sometimes fetter diplomatic relations without any reason therefor. Thanks to obligatory arbitration, States could more easily maintain their legitimate claims, and what is more important still, could more easily escape from the unjustified demands.

Obligatory arbitration would be of invaluable service to the cause of universal peace. It is very evident that the questions of the second class, to which alone this method is applicable, very rarely form a basis for war. Nevertheless, frequent disputes between States, even though with regard only to questions of the second class, while not forming a direct menace to the maintenance of peace, nevertheless disturb the friendly relations between States and create an [11] atmosphere of distrust and hostility in which some incident or other, like a chance spark, may more easily cause war to burst forth. Obligatory arbitration, resulting in absolving the interested States from all responsibility for any solution of the difference existing between them, seems to be fitted to contribute to the maintenance of friendly relations, and in that way to facilitate the peaceful settlement of the most serious conflicts which may arise within the field of their most important mutual interests.

In thus recognizing the great importance of obligatory arbitration it is above all indispensable to set forth accurately the sphere of its application; we must indicate in what cases obligatory arbitration is applicable.

The grounds of international disputes are very numerous and infinitely varied; nevertheless, whatever may be the subject of dispute, demands made by any State whatever upon another State can be listed in the following categories:

1. One State demands of another material indemnity for damages and losses caused to it or to its nationals by the acts of the defendant State or its nationals, which the former State deems contrary to law.

2. A State demands that another shall or shall not exercise certain given attributes of the sovereign Power, shall or shall not perform certain specified acts which do not concern its material interests.

So far as disputes of the first category are concerned, the application of obligatory arbitration is always possible and desirable. Conflicts of this nature relate to questions of law; they do not concern the national honor of States or the vital interests thereof, it being understood that a State whose national honor or vital interests had been attacked would not of course limit itself, and could not limit itself, to demanding material indemnity for damages and losses suffered by

it. War, which is always a highly regrettable thing, would lose its significance and would have no moral justification if it were undertaken for a dispute arising in regard to facts of little real importance, such as accounts to be settled for material damages caused to one State by acts committed by another, and which the former did not consider in accordance with law. But the more impossible war becomes in such cases, the more indispensable it is to recommend obligatory arbitration as the most effective means of action for a peaceful solution of disputes of this character.

The history of international relations proves beyond doubt that in the great majority of cases claims for indemnity for damages suffered have actually been the subject of arbitrations. The bases of these demands vary a great deal. We mention, for example, the violation of neutral duties,<sup>1</sup> violation of the rights of neutral States,<sup>2</sup> the illegal arrest of a foreign subject,<sup>3</sup> losses caused to a foreign national through the fault of a State,<sup>4</sup> seizure of private property of a belligerent upon land,<sup>5</sup> illegal seizure of vessels,<sup>6</sup> violation of the right of fishery.<sup>7</sup>

In general, whatever may be the bases or circumstances of the dispute, States cannot find any difficulty in submitting it to arbitration if it deals with an indemnity for damages and losses.

It would seem therefore that the Conference should follow the same path, by declaring arbitration obligatory for the examination of disputes of the first class. It goes without saying that in exceptional cases where the financial question involved is of a very important character from the point of view of the interests of the State; for example, in case it concerned the bankruptcy of a State, each Power, invoking national honor or vital interests, may decline to resort to arbitration as a means of settling the difficulty.

It seems that obligatory arbitration could not and should not be applied to disputes of the second class, which are much more important and threatening to the general peace. In this category are included disputes of all kinds arising in connection with political treaties which concern the vital interests and national honor of States. Obligatory arbitration in these cases would tie the hands of the interested Power, and reduce it to a passive state when dealing with questions upon which its security in large part depends; that is to say, questions of which none but the sovereign Power can be the judge. *In introducing international arbitration into the international life of States we must proceed with extreme care in order not to extend unreasonably its sphere of application, so as to shake the confidence which may be inspired therein, or discredit arbitration in the eyes of Governments and peoples.*

We must not lose sight of the fact that each State, and above all each great Power, would prefer to propose the abrogation of the treaty making arbitration obligatory, rather than to submit to it questions which absolutely require that the decision thereof shall be made by the sovereign Power acting freely and without restriction. In all cases, in the interests of a greater development of the institu-

<sup>1</sup> The case of the *General Armstrong* (1881); the case of the *Alabama* (1872).

<sup>2</sup> Blockade of Portendik (1843), etc.

<sup>3</sup> The case of Captain White (1864); the case of Dundonald (1873), etc.

<sup>4</sup> Butterfield case (1888); dispute between Mexico and the United States (1872), etc.

<sup>5</sup> Case of the *Macedonian*.

<sup>6</sup> Seizure of the vessels *Veloz Mariana*, *Victoria*, and *Vigie* (1852); case of the *Phare* (1879), and others.

<sup>7</sup> Cases of fisheries of Newfoundland (1877), etc.

tion of arbitration, the Conference should limit its application to a specified number of legal questions arising from the interpretation of existing treaties of no political significance. These treaties should be specifically noted in advance by the Conference, and their enumeration can be completed in time as the theory, and above all the practice, of international law may indicate.

Among the treaties the interpretation of which should be submitted entirely and unconditionally to obligatory arbitration, we must note first of all that extensive group of treaties of a world-wide character which have formed a system of *international* relationships — international unions — to serve interests which are also international. Such, for example, are conventions regarding postal and telegraph unions, international protection of literary property, etc. In time, in proportion to the increasing means of intercommunication between States, a great number of their moral and material interests will lose their exclusively national character, and will be raised to the heights of interests of the whole international community. To provide for these interests by the efforts and with the means of a single State is an impossible work. And that is why each year adds to the number of treaties of a world-wide character, uniting many States and determining the ways and means for the common protection of common interests.

Since other treaties, as a general rule, are only *artificial settlements of opposing interests*, treaties of a universal character always express necessarily the agreement upon *common and identic* interests. That is the reason that within the scope of these treaties serious disputes incapable of settlement, or conflicts of a national character in which the interests of one are absolutely opposed to that of another, never arise and cannot arise. So far as momentary misunderstandings are concerned — concerning their interpretation, each State will willingly confide the solution to an arbitral tribunal, it being understood that all the Powers have an equal interest in maintaining the treaties in question, which serve as bases for extensive and complex questions of international institutions and regulations which are the only means of serving vital and permanent needs.

It should be noticed that the first attempt to introduce obligatory arbitration into international practice was in fact made in a treaty of a universal character, that relating to the Postal Union of 1874; Article 16 of this treaty establishes obligatory arbitration for the solution of all the differences with reference to the interpretation and application of the treaty in question.

The Hague Conference would seem therefore to be perfectly justified in extending the provisions of Article 16 of the Treaty of Berne to all treaties of a universal character which are entirely analogous to this one.

In the category of treaties of a world-wide character susceptible of submission to obligatory arbitration, the treaties contained in the following two subdivisions may be included:

1. Treaties concerning international protection of the great arteries of world-wide intercourse, postal, telegraph, railroad conventions; conventions for the protection of submarine cables, regulations to prevent the collision of vessels on the high seas, conventions regarding the navigation of international rivers and interoceanic canals.

2. Treaties providing for the international protection of intellectual and moral interests, whether of particular States, or, in general, of the whole international community. To this subdivision belong conventions regarding the protection of literary, artistic and musical property, conventions for the pro-



tection of industrial property (trade-marks, patents), conventions concerning the use of weights and measures, conventions concerning sanitation, veterinary surgery, and measures to be taken to prevent phylloxera.

Besides treaties of a world-wide character, arbitration could also be applied to the solution of differences arising from the interpretation and application of treaties concerning particular fields of private international law, civil and criminal.

It must be noted, however, that the most important questions of international law are actually decided by the particular legislation of each State.

Because of the difficulties of this situation, resulting in a great lack of definition of the mutual rights and duties of individuals in international intercourse, the question of a code of private international law has been considered. So long as this question is not definitely decided, either by the conclusion of separate treaties between States, or by the conclusion of a treaty of a world-wide character, it would be more prudent not to attempt obligatory arbitration except in questions relating to the right of succession of property, which is already, to a certain degree, sufficiently regulated by international treaties.

So far as questions of international criminal law which arise with regard to the interpretation of treaties concerning cooperation between States for the administration of justice are concerned, it would seem that these questions, being exclusively of a legal character, might be decided by obligatory arbitration, this appearing to be equally possible and desirable for all States.

Finally, with a view to preventing those disputes and misunderstandings which are so frequent among States with regard to the delimitation of boundaries, it would also seem most opportune to confide to obligatory arbitration the interpretation of so-called treaties of delimitation, so far as these are of a technical and non-political character.

Such are the limits within which it would be possible and desirable to determine the sphere of action of obligatory arbitration.

We may permit ourselves to believe that in time it will become possible to extend obligatory arbitration to cases not actually provided for in advance; but even within the limits above indicated, this means of action will be a great aid to the success of the great principles of law and justice in the international field.

The Peace Conference, by recognizing as far as possible the use of arbitration as obligatory, will by that fact approach the goal which was set up before the Governments of the Great Powers at Aix-la-Chapelle in 1818. It will set an example of justice, concord, and moderation; it will sanction the efforts of all the Governments for the protection of peaceful arts, for the development of the eternal prosperity of States and for the reestablishment of the high ideals of religion and morality.

**Annex 2, A**

[14]

**DECLARATION OF SIR JULIAN PAUNCEFOTE***(Meeting of May 26)*

MR. PRESIDENT: Permit me to ask, before going further in the matter, whether it would not be useful and opportune to sound the Commission upon the subject of the most important question — as I believe — which you mentioned in your address, the establishment of an international Permanent Court of Arbitration.

Many codes of arbitration and rules of procedure have been made, but procedure has been regulated up to the present by the arbitrators and by special or general treaties.

Now, it seems to me that new codes and rules of arbitration, whatever may be their merit, do not advance very much the great cause which brings us here.

If we desire to take a step in advance, I believe that it is absolutely necessary to organize a permanent international tribunal which can assemble instantly at the request of contesting nations. This idea established, I believe that we shall not have very much difficulty in coming to an understanding upon the details. The necessity for such a tribunal and the advantage which it would offer, as well as the encouragement and even impetus which it would give to the cause of arbitration, have been set forth with vigor and clearness — and equal eloquence — by our distinguished colleague, Mr. DESCAMPS, in his interesting “Essay upon arbitration,” an extract from which appears among the acts and documents so graciously furnished the Conference by the Netherland Government. There is nothing left for me to say upon this subject, therefore, and I would be grateful, MR. PRESIDENT, if, before proceeding further, you would consent to gather the ideas and sentiments of the Commission upon the proposition which I have the honor to submit to you concerning the establishment of an international Permanent Court of Arbitration.

**Annex 2, B**

[15]

**PERMANENT COURT OF ARBITRATION****PROPOSITION OF SIR JULIAN PAUNCEFOTE****1**

With a view to facilitate immediate recourse to arbitration by States which may fail to adjust by diplomatic negotiations differences arising between them, the signatory Powers agree to organize in manner hereinafter mentioned, a permanent “tribunal of international arbitration” which shall be accessible at

all times and which shall be governed by the code of arbitration provided by this Convention, so far as the same may be applicable and consistent with any special stipulations agreed to between the contesting parties.

## 2

For that purpose a permanent central office shall be established at . . . , where the records of the tribunal shall be preserved and its official business shall be transacted.

A permanent secretary, an archivist and a suitable staff shall be appointed who shall reside on the spot. This office shall be the medium of communication for the assembling of the tribunal at the request of the contesting parties.

## 3

Each of the signatory Powers shall transmit to the others the names of two persons of its nationality who shall be recognized in their own country as jurists or publicists of high character for learning and integrity and who shall be willing and qualified in all respects to act as arbitrators. The persons so nominated shall be members of the tribunal and a list of their names shall be recorded in the central office. In the event of any vacancy occurring in the said list from death, retirement or any other cause whatever, such vacancy shall be filled up in the manner hereinbefore provided, with respect to the original appointment.

## 4

Any of the signatory Powers desiring to have recourse to the tribunal for [16] the peaceful settlement of differences which may arise between them, shall notify such desire to the secretary of the central office, who shall thereupon furnish such Powers with a list of the members of the tribunal from which they shall select such number of arbitrators as may be stipulated for in the arbitration agreement. They may besides, if they think fit, adjoin to them any other person, although his name shall not appear on the list. The persons so selected shall constitute the tribunal for the purposes of such arbitration and shall assemble at such date as may be fixed by the litigants.

The tribunal shall ordinarily hold its sessions at . . . , but it shall have power to fix its place of session elsewhere and to change the same from time to time as circumstances and its own convenience or that of the litigants may suggest.

## 5

Any Power, although not a signatory Power, may have recourse to the tribunal on such terms as shall be prescribed by the regulations.

## 6

The Government of . . . is charged by the signatory Powers to establish on their behalf as soon as possible after the conclusion of this Convention a Permanent Council of Administration at . . . to be composed of five members and a secretary.

The Council shall organize and establish the central office, which shall be under its control and direction. It shall make such rules and regulations from time to time as may be necessary for the proper discharge of the functions of the office. It shall dispose of all questions which may arise in relation to the working of the tribunal or which may be referred to it by the central office. It shall have absolute power as regards the appointment, suspension or dismissal

of all employees and shall fix their salaries and control the general expenditure.

The Council shall elect its president who shall have a casting vote. Three members shall form a quorum. The decisions of the Council shall be governed by a majority of votes.

The remuneration of the members shall be fixed from time to time by accord between the signatory Powers.

7

The signatory Powers agree to share among them the expenses attending the institution and maintenance of the central office and of the Council of Administration.

The expenses of and incident to every arbitration, including the remuneration of the arbiters, shall be equally borne by the contesting Powers.

### Annex 3, A

[17]

#### RUSSIAN PROPOSAL

##### (a) ARTICLES WHICH MIGHT REPLACE ARTICLE 13

###### *Project for an arbitral tribunal*

###### ARTICLE 1

With a view to unifying international arbitral practice as much as possible, the contracting Powers have agreed to establish for a period of . . . years, an arbitral tribunal, to which the cases of obligatory arbitration enumerated in Article 10 will be submitted, unless the interested Powers agree upon the establishment of a special arbitral tribunal for the settlement of the dispute which has arisen between them.

Litigant Powers may also resort to the above-indicated tribunal in all cases of voluntary arbitration if a special agreement concerning the same is made between them.

It is of course understood that all Powers, not excepting those who are not contracting Powers nor those who have made reservations, can submit their differences to this tribunal by addressing the Permanent Bureau provided for in Article . . . of Appendix A.

###### ARTICLE 2

The organization of the arbitral tribunal is given in Appendix A of the present article.

The organization of arbitral tribunals established by special agreements between litigant Powers, as well as the rules of procedure to be followed during the investigation of the dispute and the rendering of the arbitral award, are set forth in Appendix B (Arbitral code).

The provisions contained in this latter Appendix may be modified by a special agreement between the States which resort to arbitration.

**Annex 3, B**

[18]

**APPENDIX A, MENTIONED IN THE ADDITIONAL ARTICLE 2 OF  
THE RUSSIAN PROPOSAL****CONSTITUTION OF AN ARBITRAL TRIBUNAL**

In the absence of a special *compromis* the arbitral tribunal provided for in Article 13 shall be formed as follows:

1. The contracting parties establish a permanent tribunal for the solution of the international disputes which are referred to it by the Powers by virtue of Article 13 of the present Convention.

2. The Conference shall designate for the period which will elapse before the meeting of another Conference, five Powers, each one of which, in case of a request for arbitration, shall name a judge, either from its own nationals or from others.

The judges thus named form the arbitral tribunal with power to consider the case which has arisen.

3. If one or more Powers among those in litigation are not represented upon the arbitral tribunal, by virtue of the preceding article, each of the two parties in litigation shall have the right to be represented thereon by a person of its own choice acting as judge and having the same rights as the other members of the tribunal.

4. The tribunal shall choose its president from among its members and he, in case of equal division of votes, shall have the deciding vote.

5. A Permanent Bureau of arbitration shall be established by the five Powers who are designated by virtue of the present act to create the arbitral tribunal. They shall draft the rules governing this Bureau, appoint employees thereof, provide for their successors in case of necessity, and shall fix their salaries. This Bureau, the office of which shall be at The Hague, shall consist of a secretary general, an assistant secretary, a secretary to act as archivist, as well as the rest of the personnel who shall be appointed by the secretary general.

6. The expenses of maintaining this Bureau shall be divided among the States in the proportions established for the International Postal Bureau.

7. The Bureau shall make an annual report of its business to the five Powers which appoint it, and the latter shall transmit this report to the other Powers.

8. The Powers between which a dispute has arisen shall address the Bureau and furnish it with the necessary documents. The Bureau shall advise the five Powers above mentioned and they shall immediately create the tribunal. The tribunal shall meet ordinarily at The Hague; it may also meet in another city, if an agreement to this effect is reached by the interested States.

9. During the work of the tribunal the Bureau shall furnish the secretarial staff. It shall follow the tribunal in case of change of meeting-place. The archives of the international tribunal shall be deposited with the Bureau.

10. Procedure before the tribunal above mentioned shall be governed by the provisions of the arbitral code.

**Annex 4**

[19]

**AMENDMENT TO THE RUSSIAN DRAFT REGARDING MEDIATION  
AND ARBITRATION SUBMITTED BY HIS EXCELLENCY  
COUNT NIGRA**

With the object of preventing or putting an end to international conflicts, the Peace Conference, assembled at The Hague, has resolved to submit to the Governments there represented the following articles which are intended to be made an international agreement.

**ARTICLE 1**

In case a conflict between two or more Powers is imminent, and after every attempt at reconciliation by means of indirect negotiations has failed, the litigant parties are obliged to resort to mediation or arbitration in the cases indicated in the present act.

**ARTICLE 2**

In all other cases mediation or arbitration are recommended by the signatory Powers; but remain voluntary.

**ARTICLE 3**

In any case, and even during hostilities, each one of the Powers signatory to the present act, and not involved in the dispute, has the right to offer to the contending Powers its good offices and mediation, or to propose to them to resort to the mediation of another Power, which is also neutral, or to arbitration.

This offer or this proposal cannot be considered by one or the other of the litigant parties as an unfriendly act, even in case mediation and arbitration, not being obligatory, are rejected.

**ARTICLE 4**

A request for, or offer of, mediation has priority over arbitration.

But arbitration can or should be proposed according to the circumstances, not only when there is no demand for or offer of mediation, but also when mediation would have been rejected or would not have brought about reconciliation.

**ARTICLE 5**

A proposal for mediation or arbitration, so long as it is not formally accepted by all the litigant parties, cannot, except where there is a contrary agreement, interrupt, delay, or hinder mobilization or other preparatory measures, nor military operations then taking place.

**ARTICLE 6**

Recourse to mediation or arbitration according to Article 1 is obligatory.

- (1) .....
- (2) .....

## Annex 5

[20]

## GENERAL SURVEY OF THE CLAUSES OF MEDIATION AND ARBITRATION AFFECTING THE POWERS REPRESENTED AT THE CONFERENCE

It is important to distinguish provisions having a general character, that is, common to all the Powers or to a considerable group of them, from those having the character of special conventional law between the States.

## SECTION 1.—PROVISIONS OF A GENERAL CHARACTER

The principal provisions to be noticed in this class are the following:

1. *General vow concerning recourse to the good offices of a friendly Power contained in protocol No. 23 of the Congress of 1856.*

This *vow* was expressed in the following circumstances:

The Earl of CLARENDON having asked permission to lay before the Congress a proposition which it appears to him ought to be favorably received, states that the calamities of war are still too present to every mind not to make it desirable to seek out every expedient calculated to prevent their return; that a stipulation had been inserted in Article 8 of the treaty of peace, recommending that in case of difference between the Porte and one or more of the other signing Powers, recourse should be had to the mediation of a friendly State before resorting to force.

The first plenipotentiary of Great Britain conceives that this happy innovation might receive a more general application, and thus become a barrier against conflicts, which frequently break forth only because it is not always possible to enter into explanation and to come to an understanding.

He proposes, therefore, to agree upon a legislation calculated to afford for the future to the maintenance of peace that chance of duration, without prejudice, however, to the independence of Governments.

Count WALEWSKI declares himself authorized to support the idea expressed by the first plenipotentiary of Great Britain; he gives the assurance that the plenipotentiaries of France are wholly disposed to concur in the insertion in the protocol of a *vow*, which, being fully in accordance with the tendencies of our epoch, would not in any way fetter the liberty of action of Governments.

Count BUOL would not hesitate to concur in the opinion of the plenipotentiaries of Great Britain and of France, if the resolution of Congress is to have the form indicated by Count WALEWSKI, but he could not take in the name of his Court, an absolute engagement calculated to limit the independence of the Austrian Cabinet.

The Earl of CLARENDON replies, that each Power is and will be the sole judge of the requirements of its honor and of its interests; that it is by no means his intention to restrict the authority of the Governments, but only to afford them the opportunity of not having recourse to arms, whenever differences may be adjusted by other means.

Baron MANTEUFFEL gives the assurance that the King, his august master, completely shares the ideas set forth by the Earl of CLARENDON; that he therefore, considers himself authorized to adhere to them, and to give them the utmost development which they admit of.

Count ORLOFF, while admitting the wisdom of the proposal made to the Congress, considers that he must refer to his Court respecting it, before he expresses the opinion of the plenipotentiaries of Russia. . . .

Count WALEWSKI adds, that there is no question of stipulating for a right or of taking an engagement; that the wish expressed by the Congress cannot in any case oppose limits to the liberty of judgment, of which no Power [21] can divest itself in questions affecting its dignity; that there is therefore no inconvenience in attaching a general character to the idea entertained by the Earl of CLARENDON, and in giving to it the most extended application. . . .

Count BUOL approves the proposition in the shape that Lord CLARENDON has presented it, as having a humane object; but he could not assent to it, if it were wished to give to it too great an extension, or to deduce from it consequences favorable to *de facto* Governments, and to doctrines which he cannot admit.

He desires besides that the Conference, at the moment of terminating its labors, should not find itself compelled to discuss irritating questions, calculated to disturb the perfect harmony which has not ceased to prevail among the plenipotentiaries. . . .

Whereupon, the plenipotentiaries do not hesitate to express, in the name of their Governments, the *vœu* that States, between which any serious misunderstanding may arise, should, before appealing to arms, have recourse, as far as circumstances might allow, to the good offices of a friendly Power.

The plenipotentiaries hope that the Governments not represented at the Congress will unite in the sentiment which has inspired the *vœu* recorded in the present protocol.

## *2. Mediation in case of differences threatening the relations between the Sublime Porte and the other Powers signatory to the Treaty of Paris of 1856.*

Treaty of March 30, 1856. Article 8: If there should arise between the Sublime Porte and one or more of the other signatory Powers a difference threatening the maintenance of their relations, the Sublime Porte or each of the Powers, before having recourse to the employment of force, will put the other contracting Parties in a position to prevent this extremity through their mediation.

## *3. Good offices to limit the theater of war by neutralizing territories comprised in the basin of the Kongo as defined by treaty.*

General Act of the Conference of Berlin, February 26, 1885. Article 11: In the case where a Power exercising rights of sovereignty or of protectorate in the countries mentioned in Article 1 and placed under the *régime* of commercial liberty may be involved in a war, the high signatory Parties of the present act, and those who shall adhere to it subsequently, engage themselves to lend their good offices to the end that the territories belonging to this Power and comprised in the conventional zone of commercial liberty may be, with the common consent



of this Power and of the other party or parties belligerent, placed for the duration of the war under the *régime* of neutrality and considered as belonging to a non-belligerent State; the belligerent parties may renounce, thenceforth, the extension of hostilities to the territories thus neutralized, as also their use as a base for the operations of war.

4. *Obligatory mediation and voluntary arbitration in case of serious disagreement arising concerning, or within the limits of, the basin of the Kongo as defined by treaty.*

General Act of the Conference of Berlin, February 26, 1885. Article 12: In cases where serious disagreement with regard to, or within the limits of, the territories mentioned in Article 1 and placed under the *régime* of commercial liberty, may arise between the signatory Powers of the present act or Powers which may adhere thereto in the future, these Powers agree before appealing to arms, to resort to the mediation of one or more friendly Powers.

In the same case the same Powers reserve the right to resort voluntarily to arbitral procedure.

5. *Establishment of an arbitral tribunal by virtue of the General Act of the Conference of Brussels concerning the African Slave Trade.*

General Act of the Conference of Brussels, July 2, 1890. Article 55: The capturing officer and the authority which has conducted the inquiry shall each appoint an arbitrator within forty-eight hours, and the arbitrators chosen shall have twenty-four hours to choose an umpire. The arbitrators shall, as far as possible, be chosen from among the diplomatic, consular, or judicial officers of the signatory Powers. Natives in the pay of the contracting Governments are formally excluded. The decision shall be by a majority of votes, and be considered as final.

If the Court of Arbitration is not constituted in the time indicated, the procedure in respect to the indemnity, as well as in regard to damages, shall be in accordance with the provisions of Article 58, paragraph 2.

[22] ARTICLE 56. The cases shall be brought with the least possible delay before the tribunal of the nation whose flag has been used by the accused. However, the consuls or any other authority of the same nation as the accused, specially commissioned to this end, may be authorized by their Government to pronounce judgment instead of the tribunal.

ARTICLE 58. Any decision of the national tribunal, or authorities referred to in Article 56, declaring that the seized vessel did not carry on the slave trade, shall be immediately enforced, and the vessel shall be at perfect liberty to continue on its course.

In this case, the captain or owner of any vessel that has been seized without legitimate ground of suspicion, or subjected to annoyance, shall have the right of claiming damages, the amount of which shall be fixed by agreement between the Governments directly interested, or by arbitration, and shall be paid within a period of six months from the date of the judgment acquitting the captured vessel.

6. *Institution of an arbitral tribunal by virtue of the Universal Postal Union.*

Convention of July 4, 1891. Article 23: Sec. 1. In case of disagreement between two or more members of the Union as to the interpretation of the present Convention, or as to the responsibility of an administration in case of the loss of a registered article, the question in dispute is decided by arbitration. To that end, each of the administrations concerned chooses another member of the Union not directly interested in the matter.

Sec. 2. The decision of the arbitrators is given by an absolute majority of votes.

Sec. 3. In case of an equality of votes the arbitrators choose, with a view of settling the difference, another administration equally uninterested in the question in dispute.

Sec. 4. The stipulations of the present article apply equally to all the agreements concluded by virtue of the preceding Article 19. (Regarding services in connection with letters and boxes of declared value, postal money-orders, parcel post, collection of bills and drafts, certificates of identity, subscriptions to newspapers, etc.)

*7. Establishment of a voluntary arbitration office, by virtue of the International Union for the Transportation of Merchandise by Railroad.*

Convention of October 14, 1890. Article 57: Sec. 1. To facilitate and secure the execution of the present Convention, a central office of international transportation shall be organized, charged with . . . 3. To decide, at the request of the parties, disputes which may arise concerning railroads.

Article 22, section 2, of the Convention of July 4, 1891, authorizes the International Bureau of the Postal Union "to give at the request of the parties concerned, an opinion upon questions in dispute." These judicial opinions form a sort of pre-arbitration which it seemed interesting to note.

In fulfillment of Article 57, section 1, of the Convention of October 14, 1890, the Swiss Federal Council published, under date of November 29, 1892, a set of regulations determining the arbitral procedure for disputes brought before the central office for international transportation.

## SECTION 2.—SPECIAL CONVENTIONAL LAW

### *Germany*

Article 1 of the Anglo-German agreement of July 1, 1890, provides that the delimitation of the southern frontier of "Walfish Bay" shall be reserved for decision by arbitration if within two years of the date of the signature of this agreement no understanding is reached between the two Powers regarding the determination of the said frontier.

### *Austria-Hungary*

The Treaty of commerce of May 17, 1869, between Austria-Hungary and Siam concerning a general clause providing for arbitration concerning all differences which may arise between the two countries. Article 26: Should any question arise between the high contracting Powers, which is not settled by amicable diplomatic intercourse or correspondence, it is hereby agreed that [23] the settlement of such question shall be referred to the arbitration of a friendly neutral Power, to be chosen by common accord, and that the re-

sult of such arbitration shall be accepted by the high contracting Parties as a final decision.

### *Belgium*

Belgium has concluded eleven treaties containing arbitration clauses.

Six of these clauses are general and cover all possible differences. The other five are of limited scope.

The *general arbitration clauses* are the following:

1. Belgium and the Hawaiian Islands. Treaty of friendship, commerce, and navigation, October 4, 1862. Article 26: If, by the concurrence of unfortunate circumstances, differences between the contracting Parties become the ground for an interruption of friendly relations, and if, after they have exhausted all means for a friendly and conciliatory discussion, the object of their mutual desires is not reached, arbitration by a third Power, friendly to both Parties, shall be invoked by common accord, in order to prevent by this means a complete rupture.

2. Belgium and Siam. Treaty of Friendship and Commerce, August 29, 1868. Article 24: If any difference shall arise between the two contracting countries which may not be settled amicably by diplomatic correspondence between the two Governments, these Governments shall, by common accord, nominate as arbitrator some third neutral and friendly Power, and the result of the arbitration shall be accepted by the two Parties.

3. Belgium and the South African Republic. Treaty of friendship, establishment, and commerce, February 3, 1876. Article 14. (Same text as that of the treaty with the Hawaiian Islands, *supra*, No. 1.)

4. Belgium and Venezuela. Treaty of friendship, commerce, and navigation, March 1, 1884. Article 2: If any difference whatever arises between Belgium and Venezuela, which cannot be settled in a friendly manner, the two high contracting Parties agree to submit the solution of the difficulty to the arbitration of a friendly Power, proposed and accepted by common agreement.

5. Belgium and Ecuador. Treaty of friendship, commerce, and navigation, March 5, 1887. Article 2. (Same text as that of the treaty with Venezuela, *supra*, No. 4.)

6. Belgium and the Orange Free State. Treaty of friendship, establishment, and commerce, December 27, 1894. Article 14. (Same text as that of the treaty with the Hawaiian Islands, *supra*, No. 1.)

The clauses providing for *limited arbitration* are:

1. Belgium and Italy. Treaty of commerce and navigation, December 11, 1882. Article 20: If any difficulty arises concerning either the interpretation or the execution of the preceding articles, the two high contracting Parties, after having exhausted all direct means of reaching an agreement, agree to resort to the decision of a commission of arbitrators.

This commission shall be composed of an equal number of arbitrators chosen by the high contracting Parties and an arbitrator chosen by the commission itself.

The procedure to be followed shall be determined by the arbitrators, unless an agreement be reached in regard thereto by the Belgian and Italian Governments.

2. Belgium and Greece. Treaty of commerce and navigation, May 25, 1895. Article 21: The high contracting Parties agree to resort to arbitration in all disputes which may arise from the interpretation or execution of the present treaty.

3. Belgium and Sweden. Treaty of commerce and navigation, June 11, 1895. Article 20. (Same text as that of the treaty with Greece, *supra*, No. 2.)

4. Belgium and Norway. Treaty of commerce and navigation, June 11, 1895. Article 20: In cases involving a difference between the two contracting Powers arising from the interpretation or application of the present treaty, which cannot be settled in a friendly manner by diplomatic correspondence, the two Powers agree to submit the same to the decision of an arbitral tribunal, whose decision they agree to respect and loyally to execute.

The arbitral tribunal shall be composed of three members. Each of the two contracting Parties shall designate one, not chosen from among its [24] nationals or the inhabitants of its country. These two arbitrators shall name a third. If they cannot come to an agreement thereon, the third arbitrator shall be named by a Government selected by the two arbitrators, or if they fail to agree, then by lot.

5. Belgium and Denmark. Treaty of commerce and navigation, June 18, 1895. Article 20. (Same text as that of the treaty with Greece, *supra*, No. 2.)

#### *Denmark*

1. Denmark and Venezuela. Treaty of commerce and navigation, December 19, 1862. Article 26: If, by the concurrence of unfortunate circumstances, differences between the two high contracting Parties cause an interruption of friendly relations, and if after they have exhausted the means for friendly and conciliatory discussion the object of their respective claims is not completely attained, arbitration by a third friendly and neutral Power shall be invoked by common agreement before resorting to awful use of arms.

An exception to the above is made in the case where the Party which believes itself injured cannot secure the consent of the other Party to the choice of an arbitrator by common accord, or in default of common agreement, by lot, within three months counting from the day the invitation to make such choice is extended to it.

2. Denmark and Belgium. Treaty of commerce and navigation, June 18, 1895. Article 20. (Reproduced under the heading "Belgium.")

#### *Spain*

Below are given the treaties concluded by Spain in which the arbitration clause has been inserted.

##### *A. General clauses of arbitration:*

1. Spain and Venezuela. Treaty of commerce and navigation, May 20, 1882. Article 14: If, as is not to be anticipated, there should arise between Venezuela and Spain any difference which it shall not be possible to settle in a friendly manner by the usual and ordinary means, the two high contracting Parties agree to submit such difference to the arbitration of any third Power friendly to both, which may have been proposed and accepted by mutual consent.

2. Spain and Ecuador. Additional treaty of peace and friendship, May

23, 1888. Article 1: Every question or difference which may arise between Spain and Ecuador respecting the interpretation to be placed on the existing treaties, or respecting any other point not foreseen in them, shall, if it cannot be settled in an amicable manner, be submitted to the arbitration of a friendly Power, to be proposed and accepted by common consent.

3. Spain and Colombia. Additional treaty of peace and friendship to the treaty of 1881, signed at Bogota, April 28, 1894. Article 1: Every controversy or difference which may arise between Spain and Colombia regarding the interpretation of the existing treaties, and any others which may hereafter be entered into, shall be decided by an arbitrator whose decision shall be final, and who shall be proposed and accepted by common agreement. The differences which may arise upon points not provided for in the said treaties or agreements shall likewise be submitted for arbitration; but if there is not any agreement regarding the adoption of this procedure, because the questions affect the sovereignty of the nation or are otherwise incompatible with arbitration, both Governments will be bound in every case to accept the mediation or good offices of a friendly Government for the amicable solution of all differences.

When any difference between Spain and Colombia is submitted to the judgment of an arbitrator, the high contracting Parties shall establish, by common accord, the mode of procedure, terms, and formalities which the judge and the parties must observe, in the course and termination of the judgment of arbitration.

[25] 4. Spain and Honduras. Treaty of peace and friendship, November 17, 1894. Article 2. (Text identical with that in No. 2.)

*B. Clauses providing for limited arbitration:*

1. Spain and the Netherlands. Treaty of commerce and navigation, June 8, 1887. Article 4: The high contracting Parties declare that, in the event of a discussion or of doubts arising about the execution of the present Convention, they will submit their differences to the decision of arbitrators, one being named by each of the high contracting Parties, and in case of disagreement these shall appoint a third by common accord, who shall be empowered to decide.

2. Spain and Sweden and Norway. Declarations, June 23, 1887. Article 2: Questions which may arise regarding the interpretation or execution of the treaty of commerce between Spain and Sweden and Norway, of March 15, 1883, suspended by the convention of January 18th last, and of the treaty of navigation between the same countries of March 15, 1883, or concerning the consequences of any violation of those treaties whatever, shall be submitted to arbitral commissions when all direct means of settlement and friendly discussion between the two high contracting Parties have been exhausted, and the decisions of the commissions shall be binding upon the high contracting Parties.

The members of these commissions shall be named by common agreement by the two high contracting Parties, and in case an agreement cannot be obtained, each of them shall name one arbitrator or an equal number of arbitrators, and those thus nominated to these offices shall designate an additional arbitrator who shall act in case of disagreement.

The high contracting Parties shall fix the arbitral procedure in each case, and if they fail to do so, the arbitral commission shall determine it before exercising its powers. In every case the high contracting Parties shall set forth exactly the questions or matters to be submitted to arbitration.

*France*

The Treaty of friendship, commerce, and navigation, of June 4, 1886, between France and Korea, contains in Article 1, section 2, the following provision: If differences arise between one of the high contracting Parties and a third Power, the other high contracting Party may be required by the first to lend its good offices with a view to bringing about a friendly settlement.

*Great Britain*

The treaties concluded by Great Britain and containing the arbitration clauses are as follows:

1. Great Britain and Italy. Treaty of commerce and navigation, June 15, 1883. Annexed protocol: Any controversies which may arise respecting the interpretation or the execution of the present treaty, or the consequences of any violation thereof, shall be submitted, when the means of settling them directly by amicable agreement are exhausted, to the decisions of commissions of arbitration, and the results of such arbitrations shall be binding upon both Governments.

The members of such commissions shall be selected by the two Governments by common consent, failing which each of the Parties shall nominate an arbitrator, or an equal number of arbitrators, and the arbitrators thus appointed shall select an umpire.

The procedure of the arbitrators shall in each case be determined by the contracting Parties, failing which the commission of arbitration shall itself be entitled to determine it beforehand.

[26] 2. Great Britain and Uruguay. Treaty of commerce and navigation of November 13, 1885. Article 15. (Text identical with that of No. 1.)

3. Great Britain and Greece. Treaty of commerce and navigation of November 10, 1886. Annexed protocol. (Text identical with that of No. 1.)

4. Great Britain and Mexico. Treaty of friendship, commerce, and navigation of November 27, 1888. Article 15. (Text identical with that of No. 1.)

*Greece*

1. Greece and Italy. Consular Convention of November 27, 1880. Article 32. (Reproduced under the heading "Italy.")

2. Greece and Great Britain. Treaty of commerce and navigation, November 10, 1886. Annexed protocol. (Reproduced under the heading "Great Britain.")

3. Greece and Belgium. Treaty of commerce and navigation, May 25, 1895. Article 21. (Reproduced under the heading "Belgium.")

*Italy*

The following treaties contain the clause providing for arbitration (*compromis* clause):

Italy and Uruguay. Extradition Convention, April 14, 1879. Article 16: The high contracting Parties agree that controversies which may arise respecting the interpretation or execution of the present Convention, or the consequences of any infraction of one of its provisions, should, when the means of composing them directly by amicable agreement shall have been exhausted, be submitted to the

decision of commissions of arbitration, and that the issue of such arbitration should be binding upon both Governments.

The members composing such commissions shall be chosen by the two Governments by common accord; in default of this, each of the Parties shall appoint its own arbitrator, or an equal number of arbitrators, and the arbitrators appointed shall select another.

The procedure to be observed in arbitration shall in each case be determined by the contracting Parties, and failing this, the commission of arbitrators shall consider itself authorized to determine it beforehand.

2. Italy and Roumania. Consular Convention, August 17, 1880. Article 32. (Text identical with that of No. 1.)

3. Italy and Greece. Consular Convention of November 27, 1880. Article 26. (Text identical with that of No. 1, except for the addition to the first paragraph of the following provision: "It is understood that the jurisdiction of the respective tribunals in matters of private law is in no way restricted by the provisions of the present article.")

4. Italy and Belgium. Treaty of commerce, December 11, 1882. Article 20. (Text reproduced above under the heading "Belgium.")

5. Italy and Montenegro. Treaty of commerce, March 28, 1883. Article 17: In case of disagreement concerning the interpretation or execution of the provisions contained in the present treaty, when direct means of reaching an agreement by friendly arbitration have been exhausted, the question shall be submitted to the decision of a commission of arbitrators, and the result of this arbitration shall be binding upon both Governments.

This commission shall be composed of an equal number of arbitrators chosen by each Party, and the arbitrators thus chosen shall, before performing any other operation, choose a last arbitrator. The arbitral procedure, if the Parties do not determine it by agreement, shall be previously decided upon by the commission of arbitrators itself.

6. Italy and Great Britain. Treaty of commerce, June 15, 1883. Annexed protocol. (Text similar to that of No. 1.)

[27] 7. Italy and the Netherlands. Convention for free patronage, January 9, 1884. Article 4: If any difficulty arises concerning the interpretation of this Convention, the two high contracting Parties agree to submit it to a commission of arbitrators. This commission shall be composed of an equal number of arbitrators chosen by the high contracting Parties and an arbitrator chosen by the commission itself.

8. Italy and Korea. Treaty of friendship, commerce, and navigation, June 26, 1884. Article 1: In case of differences arising between one of the high contracting Parties and a third Power, the other high contracting Party, if requested to do so, shall exert its good offices to bring about an amicable settlement of the difficulty.

9. Italy and Uruguay. Treaty of commerce, September 19, 1885. Article 27. (Text identical with that of No. 1.)

10. Italy and South African Republic. Treaty of commerce, October 6, 1886. Article 9. (Text identical with that of No. 7.)

11. Italy and the Republic of San Domingo. Treaty of commerce, October 18, 1886. Article 28. (Text identical with that of No. 1.)

12. Italy and Greece. Treaty of commerce, April 1, 1889. Annexed protocol. (Text identical with that of No. 1.)

13. Italy and Orange Free State. Treaty of commerce, January 9, 1890. Article 9. (Text identical with that of No. 1.)

14. Italy and Mexico. Treaty of commerce, April 16, 1890. Article 27. (Text similar to that of No. 1.)

15. Italy and Switzerland. Treaty of commerce of April 19, 1892. Article 14: The high contracting Parties agree, should occasion arise, to settle by means of arbitration questions concerning the interpretation and application of the present treaty, which cannot be settled to their common satisfaction by the direct method of diplomatic negotiation.

16. Italy and Colombia. Treaty of commerce, October 27, 1892. Article 27. (Text similar to that of No. 1.)

17. Italy and Montenegro. Extradition Convention, October 29, 1892. Article 18. (Text identical with that of No. 5.)

18. Italy and Paraguay. Treaty of commerce, August 22, 1893. Article 23. (Text identical with that of No. 1.)

19. Italy and Argentine Republic. General Treaty of arbitration, July 23, 1898.

His Majesty the King of Italy and his Excellency the President of the Argentine Republic, animated by the desire of always promoting the cordial relations which exist between their States, have resolved to conclude a general treaty of arbitration, and have named for this purpose as the ministers plenipotentiary:

His Majesty the King of Italy, his Excellency Count Napoleon Canevaro, Senator of the Kingdom, Vice Admiral in the Royal Navy, his Minister of Foreign Affairs; and his Excellency the President of the Argentine Republic, his Excellency Don Enrice B. Moreno, his Envoy Extraordinary, etc., Minister Plenipotentiary at the Court of the King of Italy.

Who, having found their respective full powers to be perfectly regular, have agreed upon the following:

ARTICLE 1. The high signatory Powers agree to submit to arbitral decision all controversies, whatever may be their nature and cause, which may arise between them, during the existence of this treaty, and which could not be settled in a friendly manner by direct negotiation.

It makes no difference if the controversies originated in facts prior to the provision of the present treaty.

ARTICLE 2. The high signatory Powers shall conclude a special convention for each case, in order to set forth the exact matter in dispute, the extent of the powers of the arbitrators, and any other matter with regard to procedure which shall be deemed proper.

In default of such convention, the tribunal shall specify according to the reciprocal claims of the Parties, the points of law and fact which should be decided to close the controversy.

In all other regards, in default of a special convention, the following rules shall apply:

[28] ARTICLE 3. The tribunal shall be composed of three judges. Each one of the signatory States shall designate one of them. The arbitrators thus chosen shall choose the third arbitrator.

If they cannot agree upon a choice, the third arbitrator shall be named by the head of a third State, who shall be called upon to make the selection. This State shall be designated by the arbitrators already named. If they cannot agree upon the nomination of a third arbitrator, request shall be made of the



President of the Swiss Confederation and of the King of Sweden and Norway, alternately. The third arbitrator thus selected shall be of right president of the tribunal.

The same person can never be named successively as third arbitrator.

None of the arbitrators shall be a citizen of the signatory States, nor domiciled or resident within their territories. The arbitrators shall have no interest whatever in the questions forming the subject of arbitration.

ARTICLE 4. When one arbitrator, for whatever reason, cannot take charge of the office to which he has been named, or if he cannot continue therein, his successor shall be appointed by the same procedure as was followed for his appointment.

ARTICLE 5. In default of special agreements between the Parties, the tribunal shall designate the time and place for its meetings outside the territories of the contracting States, choose the language to be used, determine the methods of examination, the formalities and periods which shall be prescribed for the Parties, the procedure to be followed, and, in general, make all decisions necessary for their operations, as well as settle all difficulties concerning procedure which may arise during the course of the argument.

The Parties agree, on their side, to place at the disposal of the arbitrators all means of information within their power.

ARTICLE 6. An agent of each Party shall be present at the sessions and represent his Government in all matters regarding arbitration.

ARTICLE 7. The tribunal has power to decide upon the regularity of its formation, the validity of the *compromis* and the interpretation thereof.

ARTICLE 8. The tribunal shall decide according to the principles of international law, unless the *compromis* applies special rules or authorizes the arbitrators to decide only in the rôle of *amiables compositeurs*.

ARTICLE 9. Unless there is a provision expressly to the contrary, all the deliberations of the tribunal shall be valid when they are secured by a majority vote of all of the arbitrators.

ARTICLE 10. The award shall decide finally each point in litigation. It shall be drawn up in duplicate original and signed by all the arbitrators. In case one of them refuses to sign, the others shall mention it and the award shall take effect when signed by the absolute majority of the arbitrators. Dissenting opinions shall not be inserted in the decision.

The award shall be notified to each Party through its representative before the tribunal.

ARTICLE 11. Each Party shall bear its own expenses and one-half of the general expenses of the arbitral tribunal.

ARTICLE 12. The award, legally rendered, decides the disputes between the Parties within the limits of its scope.

It shall contain an indication of the period within which it must be executed. The tribunal which rendered it shall decide questions which may arise concerning its execution.

ARTICLE 13. The decision cannot be appealed from, and its execution is entrusted to the honor of the nations signatory to this agreement.

However, a demand for revision will be allowed before the same tribunal which rendered the award and before it is executed:

(1) If it has been based upon a false or erroneous document;

(2) If the decision was in whole or in part the result of an error of positive or negative fact which results from the acts or documents in the case.

ARTICLE 14. The present treaty shall run for a period of ten years from the exchange of ratifications. If it is not denounced six months before its expiration, it shall be considered renewed for another period of ten years, and so on in like manner.

ARTICLE 15. The present treaty shall be ratified and the ratifications exchanged at Buenos Aires within six months from this date.

### *Japan*

Japan concluded a treaty of friendship, commerce, and navigation with Siam, February 25, 1898. Article 3 of the annexed protocol contains the following arbitration clause: Any controversies which may arise respecting the interpretation or the execution of the treaty signed this day or the consequences of any violation thereof shall be submitted, when the means of settling them directly by amicable agreement are exhausted, to the decision of commissions of arbitration, and the result of such arbitration shall be binding upon both Governments.

The members of such commissions shall be selected by the two Governments by common consent, failing which each of the Parties shall nominate an arbitrator, or an equal number of arbitrators thus appointed shall select an umpire.

The procedure of the arbitration shall in each case be determined by the contracting Parties, failing which the commission of arbitration shall be itself entitled to determine it beforehand.

### *Mexico*

1. Mexico and Great Britain. Treaty of friendship, commerce, and navigation of November 27, 1888. Article 15. (Reproduced under the heading "Great Britain.")

2. Mexico and Italy. Treaty of commerce of April 16, 1890. Article 27. (Reproduced under the heading "Italy.")

### *Montenegro*

Montenegro and Italy. Treaty of commerce of March 28, 1883. Article 17. (Reproduced under the heading "Italy.")

### *Norway*

Norway is bound by clauses of arbitration with the following countries:

1. Norway and Mexico. Treaty of July 29, 1885. Articles 26 and 27.

ARTICLE 26. The questions that may arise respecting the interpretation or the execution of the treaty of commerce between Sweden and Norway and Mexico or respecting the consequences of any violation of the said treaty shall be submitted, when all direct means of arrangement and friendly discussion between the two high Parties have been exhausted, to commissions of arbitration whose decisions shall be binding on the high contracting Parties. The members of these commissions shall be appointed by a common agreement by the two high Parties, and in case agreement cannot be reached, each of them shall name an arbitrator

or an equal number of arbitrators, and those who are thus named shall designate an umpire, who shall act in case of disagreement. The procedure for the arbitration shall be determined in each case by the high contracting Parties, and in default thereof the commission of arbitration shall determine it before entering upon its duties. In all cases the high contracting Parties shall define the questions or matters which are to be submitted to arbitration.

ARTICLE 27. It is consequently stipulated that if one or more articles of the present treaty come to be violated or infringed, neither of the contracting Parties shall make or authorize reprisals of any kind, nor declare war upon the other by reason of an injury suffered by it until the Party which considers itself aggrieved has presented to the other a statement accompanied by evidence of its complaints, and, after having requested justice and satisfaction, its request has been rejected and the offending Party has refused to submit the difference to the commission of arbitration.

2. Norway and Siam. Treaty of friendship, commerce, and navigation of May 18, 1868. Article 28. (Text identical with Article 26 of the treaty between Austria-Hungary and Siam, reproduced under the heading "Austria-Hungary.")

3. Norway and Spain. Declaration of June 23, 1887. Article 2. (Text reproduced under the heading "Spain.")

4. Norway and Switzerland. Treaty of commerce and settlement of March 22, 1894. Article 7: In case a difference respecting the interpretation or the application of the present treaty arises between the two contracting Parties and cannot be settled in a friendly way by means of diplomatic correspondence, they agree to submit it to the judgment of an arbitral tribunal, whose decision they engage to respect and execute loyally.

[30] The arbitral tribunal shall be composed of three members. Each of the contracting Parties shall designate one of them, who shall be chosen outside its nationals and the inhabitants of the country. These two arbitrators shall name the third. If they cannot agree on the choice of the latter, the third arbitrator shall be named by a Government designated by two arbitrators or, in default of agreement by lot.

5. Norway and Belgium. Treaty of commerce and navigation of June 11, 1895. Article 20. (Text reproduced above under the heading "Belgium.")

6. Norway and Portugal. Treaty of commerce of December 31, 1895. (Same text as that of the treaty of Switzerland reproduced above, No. 5.)

### *Netherlands*

1. Netherlands and Italy. Convention for gratuitous patronage of January 9, 1884. Article 4. (Reproduced under the heading "Italy.")

2. Netherlands and Portugal. These two States are reciprocally bound by a clause of arbitration, at first limited, then generalized under the following conditions:

A. *Clause of limited arbitration.* The Convention concluded at Lisbon, June 10, 1893, between the Netherlands and Portugal to regulate in an exact way the relations between the two countries in the Archipelago of Timor and Solor contains in its Article 7 the following arbitration clause:

In case any difference should arise in respect of their international relations in the Archipelago of Timor and Solor or on the subject of the interpre-

tation of the present Convention, the high Parties engage to submit to the decision of a commission of arbitrators. This commission shall be composed of an equal number of arbitrators chosen by the high contracting Parties and an arbitrator designated by those arbitrators.

*B. Clause of general arbitration.* The Declaration exchanged at Lisbon, July 5, 1894, between the two Governments on the subject of the provisional regulation of commercial relations contains the following clause:

All questions and all differences respecting the interpretation or execution of the present Declaration, likewise any other question that may arise between the two countries, provided that it does not touch their independence or their autonomy, if they cannot be settled amicably, shall be submitted to the judgment of two arbitrators, of which one shall be appointed by each of the two Governments. In case of difference of opinion between the two arbitrators, the latter shall designate by common agreement a third who shall decide.

### *Portugal*

1. Portugal and Netherlands. Convention of June 10, 1893. Article 7 (clause of limited arbitration) and Declaration of July 5, 1894 (clause of general arbitration). (Reproduced under the heading "Netherlands.")

2. Portugal and Norway. Treaty of commerce of December 31, 1895. (Reproduced under the heading "Norway.")

### *Roumania*

1. Roumania and Italy. Consular Convention of August 17, 1880. Article 32. (Reproduced under the heading "Italy.")

2. Roumania and Switzerland. Treaty of commerce of February 19/March 3, 1893. Article 7: The high contracting Parties agree to settle, should the case arise, by means of arbitration the questions concerning the application and interpretation of the present Convention which cannot be settled to their mutual satisfaction by the direct means of diplomatic negotiation.

### *Siam*

Five treaties concluded by the Siamese Government contain a clause of arbitration:

1. Siam and Sweden and Norway. Treaty of friendship, commerce, and navigation of May 18, 1868. Article 25. (Text identical with Article 26 of the treaty between Austria-Hungary and Siam, reproduced under the heading "Austria-Hungary.")

2. Siam and Belgium. Treaty of friendship and commerce of August 29, 1868. (Reproduced under the heading "Belgium.")

3. Siam and Italy. Treaty of friendship, commerce, and navigation of October 3, 1868. Article 27. (Reproduced under the heading "Italy.")

[31] 4. Siam and Austria-Hungary. Treaty of commerce of May 17, 1869. Article 26. (Reproduced under the heading "Austria-Hungary.")

5. Siam and Japan. Treaty of friendship, commerce, and navigation of February 25, 1898. Article 3 of the annexed protocol. (Reproduced under the heading "Japan.")

*Sweden*

1. Sweden and Siam. Treaty of friendship, commerce, and navigation of May 18, 1868. Article 24. (Text identical with Article 26 of the treaty with Austria-Hungary, reproduced under the heading "Austria-Hungary.")

2. Sweden and Spain. Declaration of June 23, 1887. Article 2. (Reproduced under the heading "Spain.")

3. Sweden and Belgium. Treaty of commerce and navigation of June 11, 1895. Article 20. (Reproduced under the heading "Belgium.")

*Switzerland*

1. Switzerland and Hawaii. Treaty of friendship, establishment, and commerce of July 20, 1864. Article 12. (Text similar to that of the treaty between Belgium and Hawaii, reproduced under the heading "Belgium.")

2. Switzerland and Salvador. Treaty of friendship, establishment, and commerce of October 30, 1883. Article 13: In case a difference should arise between the two contracting countries and cannot be amicably arranged through diplomatic correspondence between the two Governments, the latter agree to submit it to the judgment of an arbitral tribunal, whose decision they engage to respect and execute loyally.

The arbitral tribunal shall be composed of three members. Each of the two States shall designate one of them chosen outside of its nationals and the inhabitants of the country. The two arbitrators shall name the third. If they cannot agree on this choice, the third arbitrator shall be named by a Government designated by the two arbitrators, or, in the absence of agreement, by lot.

3. Switzerland and the South African Republic. Treaty of friendship, establishment, and commerce of November 6, 1885. Article 11. (Text identical with that of No. 2.)

4. Switzerland and Ecuador. Treaty of friendship, establishment, and commerce of June 22, 1888. Article 4. (Text identical with that of No. 2.)

5. Switzerland and Independent State of the Kongo. Treaty of friendship, establishment, and commerce of November 16, 1889. Article 13. (Text identical with that of No. 2.)

6. Switzerland and Italy. Treaty of commerce of April 19, 1892. Article 14. (Reproduced under the heading "Italy.")

7. Switzerland and Roumania. Treaty of commerce of February 19/March 3, 1893. Article 7. (Reproduced under the heading "Roumania.")

8. Switzerland and Norway. Treaty of commerce and establishment of March 22, 1894. Article 7. (Reproduced under the heading "Norway.")

**Annex 6**

[32]

**PROPOSAL OF MR. HOLLS, DELEGATE OF THE UNITED STATES  
OF AMERICA****INSTITUTION OF A SPECIAL MEDIATION**

The signatory Powers are agreed in recommending the application when circumstances allow, of special mediation in the following form:

In case of a serious difference threatening the peace, the States in dispute choose respectively a Power to which they entrust the mission of entering into direct communication, with the object of preventing the rupture of pacific relations.

For the period of their mandate which, unless there is a contrary provision, cannot exceed thirty days, the question in dispute is regarded as referred exclusively to these Powers. They must use their best efforts to settle the difficulty.

In case of a definite rupture of pacific relations, these Powers are charged with the joint task of taking advantage of any opportunity to restore peace.

**Annex 7**

[33]

**PLAN FOR AN INTERNATIONAL TRIBUNAL****PROPOSAL OF THE COMMISSION OF THE UNITED STATES OF AMERICA, SUBMITTED  
TO THE COMMITTEE OF EXAMINATION AT THE MEETING  
OF WEDNESDAY, MAY 31, 1899**

RESOLVED, That in order to aid in the prevention of armed conflicts by pacific means, the representatives of the sovereign Powers assembled together in this Conference be, and hereby are, requested to propose to their respective Governments a series of negotiations for the adoption of a general treaty having for its object the following plan, with such modifications as may be essential to secure the adhesion of at least nine sovereign Powers, of which at least eight must be American or European Powers, and at least four must have been among the number of the signatories of the Convention of Paris, the German Empire being considered as successor of Prussia, and the Kingdom of Italy as that of Sardinia.

(1) The tribunal shall be composed of persons noted for their high integrity and their competence in international law, and shall be named by the majority of the members of the highest court of justice existing in each of the adhering States. Each State signatory of the treaty shall have a representative on the tribunal. The members of this body shall hold office until their successors have been duly appointed according to the same manner of election.

(2) The tribunal shall meet for organization at a time and place agreed upon by the several Governments. However, this should not be more than six months

after the ratification of the general treaty by the nine Powers mentioned above. The tribunal shall appoint a permanent registrar and such other officers as may be found necessary. The tribunal shall be empowered to fix its place of session and to change the same from time to time as the interests of justice or the convenience of the litigants may seem to require. It fixes the rules of procedure which it is to follow.

(3) The tribunal shall be of a permanent character and shall be always open, within the limits of its own rules of procedure, for the filing of new cases and counter-cases submitted by either the signatory nations or by all other nations that wish to have recourse to it; all these cases and counter-cases, with the testimony and arguments by which they are to be supported or answered, are to be written or printed. All cases, counter-cases, evidence, arguments, and opinions expressing judgment are to be accessible, after a decision is rendered, to all who desire to pay the charges for transcription.

(4) All differences between signatory Powers may, by common consent, be submitted by the interested nations to the judgment of this international tribunal, but, in all cases that this tribunal shall be constituted, the interested parties agree, in addressing themselves to it, to accept its award.

(5) For each particular case the Court shall be constituted in accord with treaties in force between the litigant nations, whether the tribunal sits as a whole or whether the litigant nations designate only certain of its members, an odd number of not less than three. In case the Court is composed of but three judges, none of them may be either a native, subject or citizen of the States whose interests are in litigation.

(6) The general expenses of the Court are to be divided equally or in just proportion among the adhering Powers, but the expenses arising from each [34] particular case shall be provided for as may be directed by the tribunal.

The salaries of the judges may be arranged so that they are not payable until the said judges have actually fulfilled their duties to the tribunal. Cases wherein one or both of the parties may be a non-adherent State shall be admitted only upon condition of a mutual agreement between the litigant States to pay respectively a certain sum to be fixed by the tribunal to cover the expenses of the adjudication.

(7) Every litigant which shall have submitted a case to the international tribunal shall have the right to a reexamination of its case before the same judges, within three months after the notification of the decision, if it declare itself able to invoke new evidence or questions of law not raised or settled the first time.

(8) The treaty here proposed shall become operative when nine sovereign States, upon the conditions laid down in the resolution, shall have ratified its provisions.

## Annex 8

[35]

## GOOD OFFICES AND MEDIATION

## PROPOSALS OF THE COMMITTEE OF EXAMINATION PRESENTED TO THE THIRD COMMISSION, JULY 1

*Texts submitted for the examination  
of the committee*

## ARTICLE 1 (Russian draft)

With the purpose of obviating, as far as possible, recourse to force in international relations, the signatory Powers have agreed to use their best efforts to bring about by pacific means the settlement of disputes which may arise between them.

## ARTICLE 2 (Russian draft)

Consequently, the signatory Powers have decided that, in case of serious disagreement or dispute, before an appeal to arms, they will have recourse, so far as circumstances admit, to the good offices or mediation of one or more friendly Powers.

## ARTICLE 3 (Russian draft)

In the case of mediation accepted spontaneously by the litigant States, the object of the Government acting as mediator is to reconcile the opposing claims and appease the feelings of resentment which may have arisen between these States.

## ARTICLE 4 (Russian draft)

The part of the Government acting as mediator is at an end when the settlement proposed by it or the bases of a friendly settlement which it may have

*Texts presented to the Third Commission by the committee*

## ARTICLE 1

With the purpose of obviating, as far as possible, recourse to force in international relations, the signatory Powers have agreed to use their best efforts to bring about by pacific means the settlement of disputes which may arise between them.

## ARTICLE 2

Consequently, the signatory Powers decide that in case of serious disagreement or dispute, before an appeal to arms, they will have recourse, unless exceptional circumstances render this method manifestly impossible, to the good offices or mediation of one or more friendly Powers.

## ARTICLE 3

Independently of this recourse, the signatory Powers deem it expedient that one or more Powers, strangers to the dispute, should, on their own initiative, and as far as circumstances may allow, offer their good offices or mediation to the States in dispute.

Powers strangers to the dispute have the right to offer good offices or mediation, even during the course of hostilities.

## ARTICLE 4

The part of the mediator consists in the reconciliation of the opposing claims and in appeasing the feelings of resentment which may have arisen between



suggested are not accepted by the litigant States. the States in dispute.

#### ARTICLE 5 (Russian draft)

The Powers consider it useful, in case of serious disagreement or conflict between civilized States concerning questions of a political nature — independently of the recourse which these Powers might have to the good offices and mediation of Powers not involved in the dispute — for the latter, on their own initiative, and so far as circumstances will allow, to offer their good offices or their mediation in order to smooth away the difficulty which has arisen, by proposing a friendly settlement, which without affecting the interest of other States, might be of such a nature as to reconcile in the best way possible the interests of the litigant parties.

#### ARTICLE 6 (Russian draft)

It is of course understood that mediation and good offices, whether offered on the initiative of the litigant parties, or upon that of the neutral Powers, have strictly the character of friendly advice and no binding force whatever.

#### ADDITIONAL ARTICLE

(Proposed by His Excellency Count NIGRA)

(See the form adopted opposite.)

#### ARTICLE 5

The functions of the mediator are at an end when once it is declared, either by one of the parties to the dispute, or by the mediator himself, that the settlement or the bases of a friendly settlement proposed by him are not accepted.

#### ARTICLE 6

Good offices and mediation, undertaken either at the request of the litigant parties, or on the initiative of Powers strangers to the dispute have exclusively the character of friendly advice.

#### ARTICLE 7

The acceptance of mediation cannot, unless there be an agreement to the contrary, have the effect of interrupting, delaying, or hindering mobilization or other measures of preparation for war.

If it takes place after the commencement of hostilities, the military operations in progress are not interrupted unless there be an agreement to the contrary.

### SPECIAL MEDIATION

Proposition of Mr. HOLLS

(See the form adopted opposite.)

#### ARTICLE 8

The signatory Powers are agreed in recommending the application when cir-

cumstances allow, of special mediation in the following form:

In case of a serious difference threatening the peace, the States in dispute choose respectively a Power to which they entrust the mission of entering into direct communication with the Power chosen on the other side, with the object of preventing the rupture of pacific relations.

For the period of their mandate which, unless otherwise stipulated, cannot exceed thirty days, the question in dispute is regarded as referred exclusively to these Powers. They must use their best efforts to settle the difference.

In case of a definite rupture of pacific relations, these Powers are charged with the joint task of taking advantage of any opportunity to restore peace.

## Annex 9

[37]

### THE CODE OF INTERNATIONAL ARBITRATION

PROPOSALS OF THE COMMITTEE OF EXAMINATION PRESENTED TO THE THIRD COMMISSION, JULY 5, 1899

#### I.—*The system of arbitration and disputes dependent thereon*

<i>Text submitted to the examination of the committee</i>	<i>Text presented by the committee to the Third Commission</i> <sup>1</sup>
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#### ARTICLE

(International arbitration has for its object the settlement of disputes between States by judges of their own choice and in accordance with their reciprocal rights.)

#### ARTICLE 7

With regard to those controversies

#### ARTICLE 7

In questions of law and especially in

<sup>1</sup> The articles in parentheses indicate the provisions proposed by Chevalier DESCAMPS and not yet adopted by the committee.

concerning questions of law, and especially with regard to those concerning the interpretation or application of treaties in force, arbitration is recognized by the signatory Powers as being the most effective and at the same time the most equitable means for the friendly settlement of these disputes.

#### ARTICLE 8

The contracting Powers consequently agree to have recourse to arbitration in cases involving questions of the character above mentioned, so far as they do not concern the vital interests or national honor of the litigant powers.

#### ARTICLE 9

Each State remains the sole judge of whether this or that case should be submitted to arbitration, excepting those enumerated in the following article, in which cases the signatory Powers to the present document consider arbitration as obligatory upon them.

#### ARTICLE 10

Upon the ratification of the present document by all the signatory Powers, arbitration will be obligatory in the following cases, so far as they do not concern the vital interests or national honor of the contracting States.

[38] I. In case of differences or disputes relating to pecuniary damages suffered by a State or its nationals, as a consequence of illegal actions or negligence on the part of another State or its nationals.

II. In case of disagreement relating to the interpretation or application of the treaties and conventions mentioned below :

1. Treaties and conventions relating to the posts and telegraphs, railroads, and also those bearing upon the protection of submarine telegraph cables ; regulations concerning methods to prevent collisions of vessels on the high sea ;

those concerning the interpretation or application of international conventions, arbitration is recognized by the high contracting Parties as the most effective and at the same time the most equitable means to settle pacifically cases of disputes not settled by diplomacy.

#### ARTICLE 8

Consequently, the high contracting Parties agree to have recourse to arbitration in the cases above mentioned ; so far as the questions to be settled do not concern the vital interests or national honor of the litigant Powers.

#### ARTICLE 9

Each State remains the sole judge of whether this or that case should be submitted to arbitration, except the cases enumerated in the following article, in which cases the high contracting Parties consider arbitration as obligatory upon them.

#### ARTICLE 10

Arbitration will be obligatory between the high contracting Parties in the following cases, so far as they do not concern the vital interests or national honor of the States in dispute :

I. In case of disputes concerning the interpretation or application of the conventions mentioned below :

1. Conventions relating to posts, telegraphs and telephones.

2. Conventions concerning the protection of submarine cables.

3. Conventions concerning railroads.

4. Conventions and regulations concerning the methods of preventing collisions of vessels at sea.

5. Conventions concerning the protection of literary and artistic works.

6. Conventions concerning the protection of industrial property (patents, trade-marks and trade names).

conventions relating to the navigation of international rivers and interoceanic canals.

2. Conventions concerning the protection of literary and artistic property, as well as industrial property (patents, trade-marks and trade names); conventions relating to money and measures; conventions relating to sanitation and veterinary surgery, and for the prevention of phylloxera.

3. Conventions relating to inheritance, exchange of prisoners, and reciprocal assistance in the administration of justice.

4. Conventions for marking boundaries, so far as they concern purely technical and non-political questions.

#### ARTICLE 11 (*formerly 12*)

In all other cases of international disputes, not mentioned in the above articles, arbitration, while certainly very desirable and recommended by the present act, is only voluntary, that is to say it cannot be resorted to except upon the suggestion of one of the parties in litigation, made of its own accord and with the express consent and full agreement of the other party or parties.

#### ARTICLE 12 (*formerly 11*)

The enumeration of the cases mentioned in the above article may be completed by subsequent agreement between the signatory Powers of the present act.

Besides, each of them may enter into a special agreement with another Power, with a view to making arbitration obligatory in the above cases before general ratification, as well as to extend the scope thereof to all cases which the State may deem it possible to submit to arbitration.

#### [39] ARTICLE 13

With a view to facilitating recourse to arbitration and its application, the signatory Powers have agreed

7. Conventions concerning the system of weights and measures.

8. Conventions concerning reciprocal free assistance to the indigent sick.

9. Conventions relating to sanitation, conventions concerning epizooty, phylloxera and other similar scourges.

10. Conventions concerning civil procedure.

11. Conventions of extradition.

12. Conventions for settling boundaries so far as they concern purely technical and non-political questions.

II. In case of disputes concerning pecuniary claims for damages when the principle of indemnity is recognized by the parties.

#### ARTICLE 11

In cases of disputes not mentioned in the preceding article (or not provided for by special conventions) arbitration, although recognized as very desirable and recommended by the present act, is still voluntary, that is to say, it cannot be resorted to except by common agreement of the parties.

#### ARTICLE 12

The enumeration of the cases mentioned in Article 10 may be completed by subsequent general agreements.

The high contracting Parties furthermore reserve to themselves the right of concluding particular agreements, either before the ratification of the present act, or later with a view to extend obligatory arbitration to all cases which they may deem it possible to submit to it.

#### ARTICLE 13

(With a view to facilitating recourse to arbitration and its application, the high contracting Powers deem it wise

to define by common agreement the fundamental principles to be observed by the institution and the rules of procedure to be followed during the examination of the dispute and the delivery of the arbitral decision in cases of international arbitration.

The application of these fundamental principles, as well as of arbitral procedure, indicated in the appendix to the present article may be modified by a special agreement between the States which resort to arbitration.

to fix certain rules concerning the arbitral jurisdiction and procedure.

These provisions are applicable only to the extent that the parties themselves do not adopt other rules on these matters.)

## II.— *The permanent tribunal of arbitration*

### ARTICLE 1

With a view to facilitate immediate recourse to arbitration by States which may fail to adjust by diplomatic negotiations differences arising between them, the signatory Powers agree to organize in manner hereinafter mentioned, a permanent "tribunal of international arbitration" which shall be accessible at all times and which shall be governed by the code of arbitration provided by this Convention, so far as the same may be applicable and consistent with any special stipulations agreed to between the contesting parties.

### ARTICLE 1

With the object of facilitating an immediate recourse to arbitration for international differences which might not have been settled by diplomacy, the high contracting Parties undertake to organize, in the manner hereinafter mentioned, a permanent tribunal of arbitration accessible at all times and operating unless otherwise stipulated by the parties in dispute, in accordance with the code of arbitration inserted in the present convention.

### ARTICLE 1 *bis*

This tribunal shall be competent for all arbitration cases, whether obligatory or voluntary, unless the parties in dispute agree to institute a special arbitral tribunal.

### ARTICLE 2

For that purpose a permanent central office shall be established at . . . , where the records of the tribunal shall be preserved and its official business shall be transacted. A permanent secretary, an archivist, and a suitable staff shall be appointed who shall reside on the spot. *This office shall be the medium of communication for the assem-*

### ARTICLE 2

A central bureau is established at The Hague.

It is under the direction of a permanent secretary general.

It serves as registry for the tribunal.

It is the channel for communications relative to its meetings.

*It has custody of the archives and conducts all the administrative business.*

bling of the tribunal at the request of the contesting parties.

### ARTICLE 3

Each of the signatory Powers shall transmit to the others the names of two persons of its nationality who shall be recognized in their own country as jurists or publicists of high character for learning and integrity and who shall be willing and qualified in all respects to act as arbitrators. The persons so nominated shall be members of the Tribunal and a list of their names shall be recorded in the central office.

[40] In the event of any vacancy occurring in the said list from death, retirement or any other cause whatever, such vacancy shall be filled up in the manner hereinbefore provided, with respect to the original appointment.

### ARTICLE 4

Any of the signatory Powers desiring to have recourse to the tribunal for the peaceful settlement of differences which may arise between them shall notify such desire to the secretary of the central office who shall thereupon furnish such Powers with a list of the members of the tribunal from which they shall select such number of arbitrators as may be stipulated for in the arbitration agreement. They may besides, if they think fit, adjoin to them any other person, although his name shall not appear on the list. The persons so selected shall constitute the tribunal for the purposes of such arbitration and shall assemble at such date as may be fixed for the litigants.

The tribunal shall ordinarily hold its

### ARTICLE 3

Within the three months following the ratification of the present act, each signatory Power shall select two persons of known competency in questions of international law, of the highest moral reputation and disposed to accept the duties of arbitrators.

The persons thus selected shall be inscribed as members of the tribunal in a list which shall be notified to all the signatory Powers by the central bureau.

Two or more Powers may agree on the selection in common of two members.

The same person can be selected by different Powers.

The members of the tribunal are appointed for a term of six years. Their appointment can be renewed.

In case of the death or retirement of a member of the tribunal, his place is filled in the same way as he was appointed.

### ARTICLE 4

The signatory Powers which desire to have recourse to the tribunal for the settlement of differences which have arisen between them, notify such desire to the secretary general of the bureau, who furnishes them without delay with a list of the members of the tribunal.

They select from this list such number of arbitrators as may be agreed upon between them.

Failing the composition of a complete arbitral court by direct agreement of the Parties and in default of a contrary provision contained in the *compromis*, the procedure under the rules set forth in Article 10 in the code of arbitration shall be pursued for the formation of the tribunal.

The arbitrators so selected shall con-

sessions at . . . but it shall have power to fix its place of session elsewhere and to change the same from time to time as circumstances and its own convenience or that of the litigants may suggest.

#### ARTICLE 5

Any Power although not a signatory Power may have recourse to the tribunal on such terms as shall be prescribed by the regulations.

#### ARTICLE 6

The Government of . . . is charged by the signatory Powers to establish on their behalf as soon as possible after the conclusion of this Convention a permanent council of administration at . . . to be composed of five members and a secretary.

The council shall organize and establish the central office which shall be under its control and direction. It shall make such rules and regulations from time to time as may be necessary for the proper discharge of the functions of the office. It shall dispose of all questions which may arise in relation to the [41] working of the tribunal or which may be referred to it by the central office. It shall have absolute power as regards the appointment, suspension or dismissal of all employees and shall fix their salaries and control the general expenditure.

The council shall elect its president who shall have a casting vote. Three members shall form a quorum. The decisions of the council shall be governed by a majority of votes.

stitute the tribunal for the arbitration in question.

They assemble on the date fixed by the litigant parties.

#### ARTICLE 4 *bis*

The tribunal shall ordinarily sit at The Hague.

It shall have the authority to sit elsewhere and to change its place of meeting according to the circumstances and its convenience or that of the litigant parties.

#### ARTICLE 5

Any Power, although not signatory of the present act, may have recourse to the tribunal on the terms prescribed in the regulations.

#### ARTICLE 6

A permanent council composed of the diplomatic representatives of the high contracting Parties residing at The Hague and of the Netherland Minister for Foreign Affairs, who will act as president, shall be instituted in this town as soon as possible after the ratification of the present act.

This council will be charged with the establishment and organization of the central bureau, which will be under its direction and control.

It will notify to the Powers the constitution of the tribunal and will provide for its installation.

It will settle its rules of procedure as well as measures necessary for the proper operation of the central bureau.

It will also settle all questions which may arise with regard to the operations of the tribunal.

It will have absolute power over the appointment, suspension or dismissal of the officials and employees of the central bureau.

It will fix the payments and salaries and control the general expenditure.

The remuneration of the members shall be fixed from time to time by accord between the signatory Powers.

At meetings duly summoned the presence of five members is sufficient to render the discussions valid. The decisions are taken by a majority of votes.

The council will render annually to the contracting Powers an account of its activities, as well as of the labors and expenses of the Bureau.

(The members of the permanent tribunal may be present at the meetings of the council with right to take part in the discussion but not to vote.)

#### ARTICLE 7

The signatory Powers agree to share among them the expenses attending the institution and maintenance of the central office and of the council of administration.

The expenses of and incident to every arbitration including the remuneration of the arbiters shall be equally borne by the contesting Powers.

#### ARTICLE 7

The expenses of the central bureau shall be borne by the signatory Powers in the proportion fixed for the International Bureau of the Universal Postal Union.

### III.—*Arbitration Procedure*

#### ARTICLE 1

The signatory Powers have approved the principles and rules below for arbitral procedure between nations, except for modifications which may be introduced in each special case by common agreement between litigant Governments.

#### ARTICLE 2

The interested States, having accepted arbitration, sign a special act (*compromis*) in which the questions submitted to the decision of the arbitrator are clearly defined as well as all of the facts and legal points involved therein, and in which is found a formal confirmation of the agreement of the two contracting Powers to submit in good faith and without appeal to the arbitral decision which is to be rendered.

#### ARTICLE 3

The *compromis* thus freely concluded

#### ARTICLE 1

(The high contracting Parties have approved the following rules for arbitral procedure between States without prejudice to modifications which may be made therein in each special case by common agreement between the litigant Parties.)

#### ARTICLE 2

The arbitration convention may be concluded for questions already existing or for questions which may arise in the future.

It may extend to every dispute or concern only certain disputes.

It contains the agreement to submit in good faith to the arbitral decision.

#### ARTICLE 3

(The *compromis* determines the pre-



by the States may adopt arbitration either for all disputes arising between them or for disputes of a special class.

#### ARTICLE 4

The interested Governments may entrust the duties of arbitrator to the sovereign or the chief of State of a [42] third Power when the latter agrees thereto. They may also entrust these duties either to a single person chosen by them, or to an arbitral tribunal formed for this purpose.

In the latter case and in view of the importance of the dispute the arbitral tribunal may be formed as follows: each contracting party chooses two arbitrators and all the arbitrators together choose the umpire who is *de jure* president of the arbitral tribunal.

In case of equal voting the litigant Governments shall address a third Power or a third person by common agreement and the latter shall name the umpire.

#### ARTICLE 5

If the litigant parties do not arrive at an agreement upon the choice of the third Government or person mentioned in the preceding article, each of the parties shall name a Power not involved in the dispute so that the Powers thus chosen by the litigant Powers may designate an umpire by common agreement.

#### ARTICLE 6

The disability or reasonable challenge, even if of but one of the above arbitrators, as well as the refusal to accept the office of arbitrator after the acceptance or death of an arbitrator al-

cise subject of the dispute and the extent of the arbitrators' powers.)

#### ARTICLE 4

(The duties of arbitrator may be conferred on one arbitrator alone or on several arbitrators selected by the parties as they please, or chosen by them from the members of the permanent tribunal of arbitration established by the present act.

Except in the case of the constitution of a complete arbitral jurisdiction by direct agreement of the parties, the following course shall be pursued for the formation of the arbitral tribunal.

Each party appoints one arbitrator, and the arbitrators thus appointed together choose the umpire.

If the votes are equally divided the choice of the umpire is entrusted to a third Power or person selected by the parties by common accord.

If an agreement is not arrived at on this subject, each party selects a different Power or person and the choice of the umpire is made in concert by the Powers thus selected.)

#### ARTICLE 5

(When the arbitrator is a sovereign or a chief of State, the arbitral procedure depends entirely upon his august decision.)

#### ARTICLE 5 *bis*

(The tribunal appoints its president, except in the case where there is an umpire in the tribunal. In this case the umpire is *de jure* president of the tribunal.)

#### ARTICLE 6

Unless there is a stipulation to the contrary in case of the death, retirement, or disability from any cause of one of the arbitrators, his place is filled in the same way as he was appointed.

ready chosen, invalidates the entire *compromis* except in cases where these conditions have been foreseen and provided for in advance by common agreement between the contracting Parties.

#### ARTICLE 7

The meeting-place of the arbitral tribunal shall be fixed either by the contracting States, or by the members of the tribunal themselves. A change from this meeting-place of the tribunal is not permissible except by a new agreement between the interested Governments, or in case of *force majeure*, upon the initiative of the tribunal itself.

#### ARTICLE 8

The litigant Powers have the right to appoint delegates or special agents attached to the arbitral tribunal for the purpose of serving as intermediaries between the tribunal and the interested Governments.

Besides these agents the above-mentioned Governments are authorized to commit the defense of their rights [43] and interests before the arbitral tribunal to counsel or advocates appointed by them for this purpose.

#### ARTICLE 9

The arbitral tribunal decides what language shall be used in its deliberations and arguments of the parties.

#### ARTICLE 10

Arbitral procedure should generally cover two phases, preliminary and final.

The former consists in the communication to the members of the arbitral tribunal by the agents of the contracting parties of all acts, documents, and arguments, printed or written, regarding the questions in litigation.

The second — final or oral — consists of the debates before the arbitral tribunal.

#### ARTICLE 7

The tribunal's place of session is selected by the litigant parties, or failing this selection, by the arbitration tribunal.

The place thus fixed cannot be altered except by virtue of a new agreement between the interested States, or, in case of necessity, by the decision of the tribunal itself.

#### ARTICLE 8

The litigant States are entitled to appoint delegates or special agents to attend the tribunal to act as intermediaries between the tribunal and the litigant parties.

They are further authorized to commit the defense of their rights and interests before the arbitral tribunal to counsel or advocates appointed by them for this purpose.

#### ARTICLE 9

The tribunal decides on the choice of languages to be authorized for use before it.

#### ARTICLE 10

As a rule arbitration procedure comprises two phases, the preliminary phase and the final phase.

The first consists in the communication, by the agents of the States to the members of the tribunal and the opposite party, of all printed or written acts and of all documents containing the grounds of the parties.

The second is oral and consists of the discussion before the arbitration tribunal.

ARTICLE 10 *bis*

Every document produced by one party must be communicated to the other.

## ARTICLE 11

After the close of the preliminary procedure the debates open before the arbitral tribunal and are under the direction of the president.

Minutes of all of the deliberations are drawn up by secretaries appointed by the president of the tribunal. These minutes alone are of legal force.

## ARTICLE 12

The preliminary procedure being concluded the arbitral tribunal has the right to refuse all new acts and documents which the representatives of the parties may desire to submit to it.

## ARTICLE 13

The arbitral tribunal, however, is always absolutely free to take into consideration new papers or documents which the delegates or counsel of the two litigant Governments have made use of during their explanations before the tribunal.

The latter has the right to require the production of these papers or documents and to make them known to the opposite party.

## ARTICLE 14

The arbitral tribunal besides has the right to require the agents of the parties to present all the acts or explanations which it may need.

[44]

## ARTICLE 15

The agents and counsel of litigant Governments are authorized to present orally to the arbitral tribunal all the explanations or proofs which will aid the defense of the cause.

## ARTICLE 11

The discussions before the tribunal are under the direction of the president.

They are recorded in minutes drawn up by the secretaries appointed by the president. These minutes alone have an authentic character.

## ARTICLE 12

The preliminary procedure being concluded and the discussions having begun, the tribunal is entitled to refuse all new papers or documents which the representatives of one of the parties may wish to submit to it without the consent of the other.

## ARTICLE 13

The tribunal is free to take into consideration new papers or documents which the agents or counsel of the litigant parties have made use of during their explanations before the tribunal.

It has the right to require the production of these papers or documents, but is obliged to make them known to the opposite party.

## ARTICLE 14

The tribunal can, besides, require from the agents of the parties the production of all papers and all explanations which it needs.

## ARTICLE 15

The agents and counsel of the parties are authorized to present orally to the tribunal all the arguments concerning the defense of their case.

## ARTICLE 16

The agents and counsel have also the right to present motions to the tribunal concerning the matters to be discussed.

The decisions of the tribunal upon these motions are final and cannot form the subject of any discussion.

## ARTICLE 17

The members of the arbitral tribunal are entitled to put questions to the agents or counsel of the contracting Parties or to ask them for explanations on doubtful points.

Neither the questions put nor the remarks made by the members of the tribunal during the deliberations can be regarded as expressions of opinion by the tribunal in general or by its members in particular.

## ARTICLE 18

The arbitral tribunal alone is authorized to determine its competence in interpreting the clauses of the *compromis*, and according to the principles of international law as well as the provisions of special treaties which may be invoked in the case.

## ARTICLE 19

The arbitral tribunal is entitled to issue rules of procedure for the conduct of the case, to decide the forms and time in which each party must conclude its arguments and to pass upon the interpretation of the documents produced and communicated to the two parties.

## ARTICLE 20

When the agents and counsel of the parties have submitted all the explanations and evidence in defense of their case, the president of the arbitral tribunal shall pronounce the discussion closed.

## ARTICLE 16

They are entitled to raise objections and points. The decisions of the tribunal on these points decide the controversy and cannot form the subject of any subsequent discussion.

## ARTICLE 17

The members of the tribunal are entitled to put questions to the agents and counsel of the litigant parties and to ask them for explanations on doubtful points.

Neither the questions put nor the remarks made by members of the tribunal in the course of the discussions can be regarded as the enunciation of opinion by the tribunal in general or by its members in particular.

## ARTICLE 18

The tribunal alone is authorized to declare its competency by the interpretation of the *compromis*, as well as the other treaties which may be invoked in the case, and by the application of the principles of international law.

## ARTICLE 19

The tribunal is entitled to issue rules of procedure concerning the conduct of the case, to decide the forms and time in which each party must conclude its arguments (and to arrange all the formalities required for dealing with the evidence).

## ARTICLE 20

When the agents and counsel of the litigant parties have submitted all the explanations and evidence for the defense of their case, the president of the tribunal pronounces the discussion closed.

## ARTICLE 21

The deliberations of the arbitral tribunal on the merits of the case take place in private.

Every decision, whether final or interlocutory, is taken by a majority of the members present.

The refusal of a member of the tribunal to vote must be recorded in the minutes.

## [45] ARTICLE 22

The award given by a majority of votes should be drawn up in writing and signed by each member of the arbitral tribunal.

Those members who are in the minority state their dissent when signing.

## ARTICLE 23

The arbitral award is solemnly read out at a public sitting of the tribunal and in the presence of the agents and counsel of the Governments at variance.

## ARTICLE 24

The arbitral award, duly pronounced and notified to the agents of the Governments at variance, settles the dispute between them definitively and without appeal, and closes all of the arbitral procedure instituted by the *compromis*.

## ARTICLE 21

The deliberations of the tribunal take place in private.

Every decision is taken by a majority of the members of the tribunal.

The refusal of a member to vote must be recorded in the minutes.

## ARTICLE 22

The award, given by a majority of votes, is drawn up in writing and signed by each member of the tribunal.

Those members who are in the minority may record their dissent when signing.

## ARTICLE 23

The award is read out at a public sitting of the tribunal, in the presence of the agents and counsel of the litigant States, or upon their being duly summoned to attend.

## ARTICLE 24

The award, duly pronounced and notified to the agents of the States at variance, settles the dispute between the parties definitively and closes all of the arbitral procedure instituted by the *compromis*.

## ARTICLE 24 bis

The award is binding only on the parties who concluded the *compromis*.

When there is a question as to the interpretation of a convention entered into by a larger number of States than those between which the dispute has arisen, the latter notify to the other signatory States the *compromis* they have concluded and each of the signatory States is entitled to intervene in the case.

If one or more of the States avail themselves of this right, the interpretation contained in the award will be equally binding upon them.

## ARTICLE 25

Each party shall pay its own expenses and one-half of the expenses of the arbitral tribunal without prejudice to the decision of the tribunal regarding the indemnity that one or the other of the parties may be ordered to pay.

## ARTICLE 25

Each party pays its own expenses, and an equal share of the expenses of the tribunal, without prejudice to the judgments which may be pronounced by the tribunal at the expense of one or the other of the parties.

## ARTICLE 26

The arbitral award is void in case of a void *compromis* or exceeding of power, or of corruption proved against one of the arbitrators.

The procedure above indicated concerning the arbitral tribunal and beginning with section 7 commencing with the words "the seat of the arbitral tribunal" also applies in case arbitration is entrusted to a single person chosen by the interested Governments.

In case a sovereign or head of a State should reserve the right to decide personally as arbitrator, the procedure to be followed should be fixed by the sovereign or the head of the State himself.

## Annex 10

[46]

DRAFT CONVENTION FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES PRESENTED TO THE THIRD COMMISSION BY THE COMMITTEE OF EXAMINATION

SECTION 1.—THE MAINTENANCE OF GENERAL PEACE

ARTICLE 1

With purpose of obviating, as far as possible, recourse to force in the relations between States, the signatory Powers agree to use their best efforts with a view to the pacific settlement of international differences.

SECTION 2.—GOOD OFFICES AND MEDIATION

ARTICLE 2

The signatory Powers decide that in case of serious disagreement or dispute,

before an appeal to arms, they will have recourse, as far as circumstances allow, to the good offices or mediation of one or more friendly Powers.

#### ARTICLE 3

Independently of this recourse, the signatory Powers deem it expedient that one or more Powers, strangers to the dispute, should, on their own initiative, and as far as circumstances may allow, offer their good offices or mediation to the States at variance.

Powers strangers to the dispute have the right to offer good offices or mediation, even during the course of hostilities.

The exercise of this right can never be regarded by either of the parties in dispute as an unfriendly act.

#### ARTICLE 4

The part of the mediator consists in reconciling the opposing claims and appeasing the feelings of resentment which may have arisen between the States at variance.

#### ARTICLE 5

The functions of the mediator are at an end when once it is declared, either by one of the parties to the dispute or by the mediator himself, that the settlement or the bases of a friendly understanding proposed by him are not accepted.

#### ARTICLE 6

Good offices and mediation, undertaken either at the request of the parties in dispute, or on the initiative of Powers strangers to the dispute, have exclusively the character of advice and never have binding force.

#### ARTICLE 7

The acceptance of mediation cannot, unless there be an agreement to the contrary, have the effect of interrupting, delaying, or hindering mobilization or other measures of preparation for war.

If it takes place after the commencement of hostilities, the military operations in progress are not interrupted, unless there be an agreement to the contrary.

[47]

#### ARTICLE 8

The signatory Powers are agreed in recommending the application, when circumstances allow, of special mediation in the following form:

In case of a serious difference endangering the peace, the States at variance choose respectively a Power, to which they entrust the mission of entering into direct communication with the Power chosen on the other side, with the object of preventing the rupture of pacific relations.

For the period of this mandate, the term of which, unless otherwise stipulated, cannot exceed thirty days, the States in dispute cease from all direct communication on the subject of the dispute, which is regarded as referred exclusively to the mediating Powers, which must use their best efforts to settle it.

In case of a definite rupture of pacific relations, these Powers are charged with the joint task of taking advantage of any opportunity to restore peace.

## SECTION 3.—INTERNATIONAL COMMISSIONS OF INQUIRY

## ARTICLE 9

In disputes of an international nature arising from a difference of opinion as to facts which may be verified by local examination, and furthermore not involving the honor or vital interests of the interested Powers, these Powers, in case they are not able to come to an agreement by means of diplomacy, agree to have recourse, as far as circumstances allow, to the institution of international commissions of inquiry, in order to elucidate on the spot all the facts of the case by an impartial and conscientious investigation.

## ARTICLE 10

The international commissions of inquiry are constituted, unless otherwise stipulated, in the manner provided by Article 31 of the present Convention.

## ARTICLE 11

The interested Powers undertake to supply the international commission of inquiry, as fully as they may think possible, with all means and facilities necessary to enable it to become completely acquainted with and to accurately understand the facts in question.

## ARTICLE 12

The international commission of inquiry communicates its report to the interested Powers, signed by all the members of the commission.

## ARTICLE 13

The report of the international commission of inquiry has in no way the character of an award. It leaves to the Powers in dispute entire power to conclude a friendly settlement on the basis of this report, or to resort subsequently to mediation or arbitration.

## SECTION 4.—INTERNATIONAL ARBITRATION

I.—*The system of arbitration*

## ARTICLE 14

International arbitration has for its object the settlement of disputes between States by judges of their own choice and on the basis of respect for law.

## ARTICLE 15

In questions of law and especially in the interpretation or application of international conventions, arbitration is recognized by the signatory Powers as the most effective and at the same time the most equitable means of settling disputes which diplomacy has failed to settle.

## ARTICLE 16

The arbitration convention is concluded for questions already existing or for questions which may arise eventually.



It may embrace any dispute or only disputes of a certain category.

[48]

#### ARTICLE 17

The arbitration convention implies an engagement to submit in good faith to the arbitral award.

#### ARTICLE 18

Independently of general or private treaties expressly stipulating recourse to arbitration as obligatory on the signatory Powers, these Powers reserve to themselves the right of concluding, either before the ratification of the present act or later, new agreements, general or private, with a view to extending obligatory arbitration to all cases which they may consider it possible to submit to it.

#### ARTICLE 19

(See Article 29 *bis*.)

### II. — *The Permanent Court of Arbitration*

#### ARTICLE 20

With the object of facilitating an immediate recourse to arbitration for international differences which it has not been possible to settle by diplomacy, the signatory Powers undertake to organize a Permanent Court of Arbitration, accessible at all times and operating, unless otherwise stipulated by the parties, in accordance with the rules of procedure inserted in the present Convention.

#### ARTICLE 21

The Permanent Court shall be competent for all arbitration cases, unless the parties agree to institute a special tribunal.

#### ARTICLE 22

An International Bureau established at The Hague and placed under the direction of a permanent secretary general serves as registry for the Court.

This Bureau is the channel for communications relative to the meetings of the Court.

It has the custody of the archives and conducts all the administrative business.

The signatory Powers undertake to communicate to the International Bureau at The Hague a duly certified copy of any conditions of arbitration arrived at between them and of any award concerning them delivered by a special tribunal.

They undertake likewise to communicate to the Bureau the laws, regulations and documents eventually showing the execution of the awards given by the Court.

#### ARTICLE 23

Within the three months following its ratification of the present act, each signatory Power shall select four persons at the most, of known competency in questions of international law, of the highest moral reputation, and disposed to accept the duties of arbitrators.

The persons thus elected shall be inscribed, as members of the Court, in a list which shall be notified to all the signatory Powers by the Bureau.

Any alteration in the list of arbitrators is brought by the Bureau to the knowledge of the signatory Powers.

Two or more Powers may agree on the selection in common of one or more members.

The same person can be selected by different Powers.

The members of the Court are appointed for a term of six years. Their appointments can be renewed.

In case of the death or retirement of a member of the Court, his place is filled in the same way as he was appointed.

The members of the Court, in the performance of their duties, enjoy diplomatic privileges and immunities.

#### ARTICLE 24

The signatory Powers which wish to have recourse to the Court for the settlement of a difference that has arisen between them choose from the general list the number of arbitrators upon which they have agreed by common accord.

[49] They notify to the Bureau their determination to have recourse to the Court and the names of the arbitrators whom they have designated.

In default of a provision to the contrary, the tribunal of arbitration is constituted in accordance with the rules fixed by Article 31 of the present Convention.

The tribunal thus composed forms the competent court for the case in question.

It assembles on the date fixed by the parties.

#### ARTICLE 25

The tribunal of arbitration sits ordinarily at The Hague.

Except in cases of necessity, the place of session can only be altered by the tribunal with the consent of the parties.

#### ARTICLE 26

The International Bureau at The Hague is authorized to place its premises and staff at the disposal of the signatory Powers for the use of any special board of arbitration.

Powers which are not signatories of the present act may also have recourse to the jurisdiction of the Court under the conditions prescribed by the present Convention.

#### ARTICLE 27

The signatory Powers consider it their duty, if a serious dispute threatens to break out between two or more of them, to remind these latter that the Permanent Court is open to them.

Consequently, they declare that the fact of reminding the parties at variance of the provisions of the present Convention, and the advice given to them, in the highest interests of peace, to have recourse to the Permanent Court, can only be regarded as in the nature of good offices.

#### ARTICLE 28

A Permanent Council composed of the diplomatic representatives of the signatory Powers accredited to The Hague and of the Netherland Minister for

Foreign Affairs, who will act as president, shall be instituted in this town as soon as possible after the ratification of the present act by at least nine Powers.

This Council will be charged with the establishment and organization of the International Bureau, which will be under its direction and control.

It will notify to the Powers the constitution of the Court and will provide for its installation.

It will settle its rules of procedure and all other necessary regulations.

It will decide all questions which may arise with regard to the operations of the Court.

It will have entire control over the appointment, suspension or dismissal of the officials and employees of the Bureau.

It will fix the payments and salaries, and control the general expenditure.

At meetings duly summoned the presence of five members is sufficient to render valid the discussions of the Council. The decisions are taken by a majority of votes.

The Council addresses to the signatory Powers an annual report on the labors of the Court, the working of the administration and the expenditure.

#### ARTICLE 29

The expenses of the Bureau shall be borne by the signatory Powers in the proportion fixed for the International Bureau of the Universal Postal Union.

### III.—*Arbitration procedure*

#### ARTICLE 29 *bis*

With a view to encouraging the development of arbitration, the signatory Powers have agreed on the following rules which shall be applicable to arbitration procedure unless other rules have been agreed on by the parties.

#### ARTICLE 30

The Powers which have recourse to arbitration sign a special act (*compromis*), in which are clearly defined the subject of the dispute and the extent of the [50] arbitrators' powers. This act implies an engagement of the parties to submit in good faith to the arbitral award.

#### ARTICLE 31

The duties of arbitrator may be conferred on one arbitrator alone or on several arbitrators selected by the parties as they please, or chosen by them from the members of the Permanent Court of Arbitration established by the present act.

Failing the composition of the tribunal by direct agreement of the parties, the following course is pursued:

Each party appoints two arbitrators, and these together choose an umpire.

If the votes are equally divided the choice of the umpire is entrusted to a third Power, selected by the parties by common accord.

If an agreement is not arrived at on this subject, each party selects a different Power, and the choice of the umpire is made in concert by the Powers thus selected.

## ARTICLE 32

When a sovereign or the chief of a State is chosen as arbitrator, the arbitration procedure is settled by him.

## ARTICLE 33

The umpire is *ex officio* president of the tribunal.

When the tribunal does not include an umpire, it appoints its own president.

## ARTICLE 34

In case of the death, retirement, or disability from any cause of one of the arbitrators, his place is filled in the same way as he was appointed.

## ARTICLE 35

The tribunal's place of session is selected by the parties. Failing this selection the tribunal sits at The Hague.

The place thus fixed cannot, except in case of necessity, be altered by the tribunal without the assent of the parties.

## ARTICLE 36

The parties are entitled to appoint delegates or special agents to attend the tribunal to act as intermediaries between themselves and the tribunal.

They are further authorized to commit the defense of their rights and interests before the tribunal to counsel or advocates appointed by them for this purpose.

## ARTICLE 37

The tribunal decides on the choice of languages to be authorized for use before it.

## ARTICLE 38

As a general rule arbitration procedure comprises two distinct phases: pleadings and oral discussions.

The pleadings consist in the communication by the respective agents to the members of the tribunal and the opposite party of all printed or written acts and of all documents containing the grounds relied on in the case. This communication shall be made in the form and within the time fixed by the tribunal in accordance with Article 48.

The discussions consist in the oral development before the tribunal of the arguments of the parties.

## ARTICLE 39

Every document produced by one party must be communicated to the other party.

## ARTICLE 40

The discussions are under the direction of the president.

They are only public if it be so decided by the tribunal, with the assent of the parties.

They are recorded in minutes drawn up by the secretaries appointed by the president. These minutes alone have an authentic character.

[51]

#### ARTICLE 41

After the close of the pleadings, the tribunal is entitled to refuse discussion of all new papers or documents which one of the parties may wish to submit to it without the consent of the other party.

#### ARTICLE 42

The tribunal is free to take into consideration new papers or documents to which its attention may be drawn by the agents or counsel of the parties.

In this case, the tribunal has the right to require the production of these papers or documents, but is obliged to make them known to the opposite party.

#### ARTICLE 43

The tribunal can, besides, require from the agents of the parties the production of all papers, and can demand all necessary explanations. In case of refusal, the tribunal takes note of it.

#### ARTICLE 44

The agents and counsel of the parties are authorized to present orally to the tribunal all the arguments they may consider expedient in defense of their case.

#### ARTICLE 45

They are entitled to raise objections and points. The decisions of the tribunal on these points are final, and cannot form the subject of any subsequent discussion.

#### ARTICLE 46

The members of the tribunal are entitled to put questions to the agents and counsel of the parties, and to ask them for explanations on doubtful points.

Neither the questions put, nor the remarks made by members of the tribunal in the course of the discussions can be regarded as an expression of opinion by the tribunal in general, or by its members in particular.

#### ARTICLE 47

The tribunal is authorized to declare its competence in interpreting the *compromis* as well as the other treaties which may be invoked in the case, and in applying the principles of international law.

#### ARTICLE 48

The tribunal is entitled to issue rules of procedure for the conduct of the case, to decide the forms and time in which each party must conclude its arguments, and to arrange all the formalities required for dealing with the evidence.

#### ARTICLE 49

When the agents and counsel of the parties have submitted all the explanations and evidence in support of their case, the president pronounces the discussion closed.

## ARTICLE 50

The deliberations of the tribunal take place in private.  
Every decision is taken by a majority of the members of the tribunal.  
The refusal of a member to vote must be recorded in the minutes.

## ARTICLE 51

The award, given by a majority of votes, must state the reasons on which it is based. It is drawn up in writing and signed by each member of the tribunal.

Those members who are in the minority may record their dissent when signing.

## ARTICLE 52

The award is read out at a public sitting of the tribunal, in the presence of the agents and counsel of the parties or upon their being duly summoned to attend.

## ARTICLE 53

The award, duly pronounced and notified to the agents of the parties at variance, settles the dispute definitively and without appeal.

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## ARTICLE 54

The parties can reserve in the *compromis* the right to demand the revision of the award.

In this case, and unless there be an agreement to the contrary, the demand must be addressed to the tribunal which pronounced the award. It can only be made on the ground of the discovery of some new fact which is of a nature to exercise a decisive influence upon the award and which, at the time the tribunal entered its decree, was unknown to the tribunal and to the party demanding the revision.

Proceedings for revision can only be instituted by a decision of the tribunal expressly recording the existence of the new fact, recognizing in it the character described in the preceding paragraph, and declaring the demand admissible on this ground.

No demand for revision can be received unless it is formulated within three months following the notification of the award.

*(Proposal of Mr. ASSER: The parties can reserve in the compromis the right to demand the revision of the award.)*

*In this case, and unless there be an agreement to the contrary, the demand must be addressed to the tribunal which pronounced the award and only on the ground of the discovery of some new fact which is of a nature to exercise a decisive influence upon the award and which, at the time the tribunal entered its decree, was unknown to the tribunal and to the party demanding the revision.*

*Proceedings for revision can only be instituted by a decision of the tribunal expressly recording the existence of the new fact, recognizing in it the character described in the preceding paragraph, and declaring the demand admissible on this ground.*

*No demand for revision can be received unless it is formulated within six months following the notification of the award.)*

## ARTICLE 55

The award is binding only on the parties who concluded the *compromis*.

When there is a question as to the interpretation of a convention to which Powers other than those in dispute are parties, the latter notify to the former the *compromis* they have concluded. Each of these Powers is entitled to intervene in the case. If one or more avail themselves of this right, the interpretation contained in the award is equally binding on them.

## ARTICLE 56

Each party pays its own expenses and an equal share of the honoraria of the arbitrators and of the expenses of the tribunal.

## Annex 11

[53]

## PROPOSAL OF MR. ASSER, DELEGATE OF THE NETHERLANDS

*(To be inserted after Article 24 of the draft arbitral code)*

The award is binding only on the parties.

If there is a question as to the interpretation of a convention concluded by a larger number of States than those between which the dispute has arisen, the latter will notify to the other signatory States the *compromis* which they will sign and each of the signatory States will be entitled to intervene in the arbitral litigation. If one or more of these States avail themselves of this right, the interpretation of the convention contained in the award will be equally binding for them.

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